EXHIBIT " "

In The Matter Of:

PEOPLE OF THE ST TE OF NY v.

DON LD J. TRUMP, et al

October 2, 2023

SUPREME COURT - NY COUNTY

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Min-U-Script® with Word Index

SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - P RT 37

PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,
Plaintiff,
-against-
DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY McCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC; ND SEVEN SPRINGS, LLC;
Defendants.

Index No. 452564/22

BENCH TRI L
60 Centre Street
New York, New York
October 2, 2023

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OFFICI L COURT REPORTERS

THE COURT: Good morning, everyone. I'm Judge rthur Engoron, and that is the correct pronunciation of my surname. En-gor-on, not Eng-o-ron or even worse En-gu-ron.

Before we start the actual trial in this matter, I'll hear from the attorney from the various news organizations, who, last Friday, filed an application for certain forms of press access.

MR. B LIN: Good morning, your Honor.

THE COURT: Good morning.

MR. B LIN: Robert Balin of Davis Wright Tremaine, LLP for 18 news organizations that made a press application for access on Friday.

Your Honor, I start by saying I want to thank the Court. I note the dministrative Judge of this section is here, as well as the Director of Public Information for the Court System; and, I'd like to thank you because you've granted, already, many of the requests that were in our Friday letter.

I have only two requests to make of your Honor this morning. First, is to permit a pool television camera person to televise the opening and closing statements of the defense counsel and the ttorney General.

I'd start by saying I've asked both sides their

positions. The New York ttorney General does not oppose. Defense counsel does not take any position and leaves it to your Honor. Your Honor, I believe if ever there was a case that justified the public understanding what their legal arguments are -- it's not about witnesses. What the legal arguments are in this case is of such great significance, this is that case.

We have a pool TV cameraman outside. His name is Tracey Reede. He's from NBC. He has a Whitehouse press pass, a State Department press pas and a Defense Department press pass. I would note, your Honor, that televising of opening and closing arguments was allowed by a Judge in Westchester County in People v. Olivo in 2008, three years after the Courtroom Television Network case.

We believe it is permitted, and, it is up to your Honor. It's within your discretion. There are various factors. One, is the positions of the parties. Two, is would it disturb the proceedings. Your Honor, I can bring the cameraman and his camera in, if you'd like.

Three, is the type of case. I can hardly overstate the significance of this case. Four, safety. Five is. Maintaining decorum. I believe all of those factors are met here.

So, your Honor, that is our first request. I

know you have other things to do and I don't want to take your time.

THE COURT: Give me a second.

(Brief pause.)

THE COURT: That's more difficult, a more fraught request than you might expect or other people would expect. I'm afraid I'm constrained to deny it.

MR. B LIN: Thank you, your Honor, for your time on it.

The second request-- I thank the Court. You've permitted laptop use, which, I believe, is surely necessary in the courtroom for this type of proceeding. The concern expressed to me by a number of members of the press is that with so many members of the press using the Wi-Fi in this courthouse, that it may either crash or it may slow down.

The request that I have for the Court is to allow what are called remote hotspots. number of the members of the press have them and to use cell phones solely for the ability to get to the Internet and get to their news rooms. That was the second request I have for your Honor.

THE COURT: Granted.

MR. B LIN: ll right. Your Honor, thank you very much.

THE COURT: You're welcome. I'm allowing five or so pool photographers. re they waiting to come in now?

(Photographs taken.)

THE COURT: The name of the case that brings us here today is People of the State of New York by Letitia James, ttorney General of the State of New York, versus Donald J. Trump, et al., meaning, and others.

The index number, which is how we keep track of cases around here, and might help you to follow it on the New York State Court's electronic filing system, affectionately known by its acronym as NYSCEF is 452564/2022.

Early this morning, I received an application from plaintiff seeking to discuss some housekeeping matters. I will address those matters after opening statements. The trial is scheduled to last from today until December 22, 2023, the Friday before Christmas.

I intend to speak now for approximately five minutes. Call it my opening statement. Soon after which, counsel for each side will make their, no doubt, longer opening statements.

For the next three months after that, I hope that the only words I will utter are sustained, overruled, and let's take a ten-minute break and even as

to those, the less often the better.

The basic schedule to which we'll adhere is Monday through Thursday, 10 a.m. to 1 p.m. then a one-hour-and-15-minute lunch break, then 2:15 through 4:30 p.m.. on Fridays, we'll only have the morning session, 10:00 to 1:00.

Months ago, I declared that the trial would commence today, October 2, 2023, come hell or high water. Meteorologically speaking, we've had the high water but we're ready to go. I commend all counsel for adhering to my tight schedule and for their Herculean efforts to get us where we are today.

This case has esteemed counsel. On one side, we have an ttorney General. On the other side, we have a former Solicitor General. In the middle, we have me, a generalist, meaning that I know a little about a lot.

One thing I know a lot about is the legal definition of fraud. Common law, meaning law before we all came of age. Fraud, also known as misrepresentation, has five elements.

First, a material statement. Second, falsity of that statement. Third, scienter, lawyer talk meaning that the defendant knew that this statement was false. Four, the plaintiff's justifiable reliance, and five, damages.

Common-law fraud is not an easy case to prove. Material, according to whom? How do we know what the defendant knew? What reliance is justifiable? Then along came Jacob Javitz. Nowadays, he's best known for the convention center and for the federal office building directly across the street from us, which you can actually see out our windows, both named for him.

Before that, he was best known as the long-term United States Senator from New York. Before that, he was the ttorney General of the State of New York, the position that Ms. James now occupies.

In 1956, he convinced New York State to adopt what is now codified as Executive Law Section 63(12) which gives the ttorney General the authority to investigate and bring actions against any entities that allegedly engage in "repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality the carrying on, conducting a transaction of business."

Subsequent case law has construed that to mean, or at least to include, false statements used in business. Incidentally, Javitz was a savvy politician. He was born on the lower eastside, so very near here. When he campaigned on his home turf, he called himself Jacob Javitz. When he campaigned on the posh upper eastside, he called himself John Javitz, and, when he

campaigned upstate, he called himself Jake Javitz. I want to make sure Mr. Kise returns to Florida with some New York history and political street smarts.

The complaint in this case consists of seven causes of action. There are no counterclaims, at least not in court. The first is known as the standard on Section 63(12) claim. The other six are claims that defendants violated Section 63(12) by violating various sections of New York's Penal Law.

s all, or most, of you know, six days ago, on Tuesday September 26th, I granted plaintiff summary judgment only on liability and only on the first cause of action. What's left to be tried and decided are, first, either liability or exoneration on the other six causes of action and, second, monetary damages or other relief.

Plaintiff is seeking disgorgement of alleged ill-gotten gains and to limit defendant's ability to conduct business in New York.

You have probably noticed or already read that this case has no jury. Neither side asked for one and, in any event, the remedies sought are all equitable in nature, mandating that the trial be a bench trial, one that a Judge alone decides. I promise to do my best, despite my lame attempts at humor.

s I said in an earlier phase of this

litigation, I take my job very seriously, and, I know that counsel and the parties do, likewise. The acoustics in this room are not too bad, as you can hear, I hope, but I'm sure everybody will be hanging on to every word you say. So, I beseech counsel to speak slowly, loudly, clearly, and, as I'm doing, directly into the microphones so that everyone in the bleacher seats may hear you.

Now, let's listen to plaintiff's opening statement.

MR. W LL CE: Thank you, your Honor. Kevin Wallace for the Office of the ttorney General.

Some of what I heard, I'm just going to double up on what you just talked about. The first of which is that, obviously, the case today --

THE COURT: I hear feedback.

MR. W LL CE: Okay.

(Brief pause)

THE COURT: Please continue and we'll see how it sounds.

MR. W LL CE: Thank you, again, your Honor. s I mentioned, I may cover some of the ground that you already did.

First of all, the case today is, obviously, significantly different than it was just a week ago. t this point, the People have already proven that the

Statements of Financial Condition for Donald J. Trump were false and misleading in each year from 2011 to 2021.

We have already proven that those statements were then repeatedly and persistently used in the conduct of business after July 13, 2014. We have also proven that each of the defendant's entities and individuals alike participated in that fraud. So, what remains for us to prove at trial?

First, the People will establish that each of these defendants further violated Executive Law 63(12) by engaging in repeated and persistent illegal acts in the conduct of business.

The second thing we will show is that those illegal acts, together with the fraud we've already established, entitles the People to all of the equitable relief that we're seeking, including a bar on new commercial real estate transactions, a bar on borrowing on New York banks, an industry bar for each of the individual defendants, removal of trustees, and an accurate G P compliance Statement of Financial Condition for Donald J. Trump.

Finally, the People will demonstrate that the Court should disgorge the financial benefits each of these defendants obtained from their illegal conduct. Now, what illegal acts do we intend to prove?

First, we will prove defendants illegally falsified business records in violation of New York Criminal Law. We will show the defendants committed this illegal act by making false entries in the records of Trump Organization and, by extension, the records of their accountants, the banks, and other counterparties that received the fraudulent Statements of Financial Condition.

We will show the defendants made these false entries with the intent to defraud. We'll also show that the defendants conspired to make these false entries in a separate criminal violation.

The next crime we will establish is issuing false financial statements. We will show that with intent to fraud, each defendant participated in, or have knowledge of the creation of a written instrument, here the Statement of Financial Condition that described Donald J. Trump's financial condition in a manner that was inaccurate in a material way.

We will further prove that the defendants also violated this law by representing, in writing, that the statements were true while knowing that they were materially inaccurate and, once again, we'll show the defendants conspired to create and use these false statements, a separate criminal violation.

Next, we'll prove that the defendants committed insurance fraud in violation of New York Criminal Law. We will establish this illegal act by showing that the defendants, acting with intent to defraud presented the materially false financial statements to insurers in connection with the application to renew their insurance. gain, we will show the defendants conspired to commit this insurance fraud.

Now, for each of these claims, the fact the Statements of Financial Condition were false and misleading has already been established. That's been decided. Insurance fraud and false financial statement counts both require the misstatements be true and while the evidence we present of the coming weeks and months will certainly show the materiality of defendant's lies, this issue has also already been decided.

The Court has already found that the People submitted conclusive evidence that between 2014 and 2021, the defendants overvalued the assets in the statements between $812 million and $2.2 billion per year. There's no world in which that, an overstatement of that size is not material.

So, the two parts to this trial that are new from the summary judgment proceeding are intent and conspiracy. Let me start by talking about intent. The

intent to fraud here on the part of the individual defendants and entities they owned and operated is self-evident.

The defendants knew that the statements were false. They then used them to obtain and maintain benefits they were not entitled to. That is the definition of intent. Now, most of the individual defendants have argued that they lack the requisite intent because they didn't know the statements were false.

With the exception of Mr. McConney, they claim they weren't involved in the valuation process and had nothing do with the preparation of statements. The Court will be able to judge for itself the credibility of those denials when defendants appear on the stand and offer them, but, if those denials are true, the defendants were lying year after year after year to Mazars, to the banks, to any reader of the statements, and, that's because the defendants made the exact opposite representation for years.

From 2011 to 2015, the Statement of Financial Condition represented that every estimate of current value was determined by Mr. Trump. That included individual properties like Trump Tower and 40 Wall Street.

From 2016 to 2021 the Statement of Financial Condition stated that it was Donald Trump, Jr. and llen Weisselberg, the trustees from Mr. Trump's trust, who determined the estimates of current values; and, again, that included individual properties like Trump Tower and 40 Wall Street.

What about Eric Trump? For years, he served as a source of valuations for properties like Seven Springs shown here in 2012 and, again, 2014 and 2015. In 2021, Eric Trump personally oversaw the intention of Whitley Penn and their work on the statement.

What's more? Each of the defendants certified the banks, time and again, that statements were true and correct. Donald Trump, from 2011 through 2015, he certified the Deutsche Bank and statements presented of financial condition fairly in all material respects.

From 2016 to 2020 Donald Trump, Jr. certified the Deutsche Bank with the statements presented of his father's financial condition fairly in all material respects.

In 2021, Eric Trump certified the Deutsche Bank that the statements presented his father's financial condition fairly in all material respects. In multiple years, llen Weisselberg certified to Ladder Capital that Donald Trump's net worth was true, correct, and complete,

and fairly presented his financial condition.

Even Jeff McConney got into the act of passing these statements off to lenders, including the lender on Seven Springs. When it came time to testify under oath, the defendants wanted nothing to do with these statements. They refuted each of these representations.

Eric Trump denied he had any knowledge of the statements whatsoever.

(Video played.)

Let's move on to the critical question of who's responsible for making sure that the statements complied with G P. None of the defendants would take responsibility. Let's start with Donald Trump, Jr., as trustee. He, together with Weisselberg, was responsible for G P presentation of the statements from 2016 until 2021. What did he say at his deposition?

(Video played.)

MR. ROBERT: Your Honor, objection.

THE COURT: Hold on. Okay, go ahead.

MR. ROBERT: The examinations under oath are not part of this case. That's not from Mr. Trump's deposition. It's from his examination under oath. The ttorney General did not take his deposition in the instant case. This goes to the motions in limine we discussed last week.

I object to the use of this EUO as part of the ttorney General's opening statement and ask that it be stricken.

THE COURT: Denied. I don't believe that's a correct statement.

MR. W LL CE: Thank you, your Honor. Moving on. What about the other trustee, llen Weisselberg, the Chief Financial Officer of the company? What did he know about the G P?

(Video played.)

(Continued on the following page..)

MR. W LL CE: What about Donald Trump? Who did he rely upon to make sure that statements were prepared according to G. . .P?

(Video played.)

MR. W LL CE: Now, all of these denials put the defendants in an impossible bind. The Court has already found that statement to be false, based on the inflated violations, and while the defendants may hope that these denials will help them to avoid liability for the inflation, the denials, we believe, that defendants lied about their involvement, certified the statements to banks an insurers; lied about the oversight they provided; lied about conforming with G. . .P.; and the defendants are left to answer the classic question: Were you lying then, or are you lying now?

But, even beyond these corrections and implausible denials, there's ample evidence of intent, based on the defendant's knowing and intentional lies.

lan Weisselberg told an insurance underwriter that the fair value for the properties is appraised annually by a professional firm. This year, it was done by Newmark Group, and it's previously been done by Cushman & Wakefield. The reason for the change is the individual at Cushman & Wakefield with whom the organization had a long-standing relationship with, moved to work at Newmark.

None of that was true. Defendants never ordered appraisals from Newmark, or Cushman, or anyone else when they were preparing the Statement of Financial Condition, and your Honor has heard defendants tell you that they were not obligated to use appraisals, even if they had them. So, not only was it a lie that they were ordering appraisals for the statements, they were ignoring the ones they had, and any claim of innocence or mistake may be most clearly refuted by the inflation of the triplex apartment, Donald Trump's personal residence, from 11,000 square feet to 30,000 square feet, nearly tripling the value.

Your Honor is well acquainted with this story. In March of 2017, while the 2016 Statement of Financial Conditions was being prepared, the defendants received an email inquiry from a reporter at Forbes. lan Garten, general counsel of the Trump Organization, then forwarded that email to Eric Trump, lan Weisselberg, and Donald Trump, Jr. mong the questions, President Trump has told Forbes in the past that his penthouse occupies 33,000 square feet. If the 1994 declaration is accurate and up-to-date, it shows President Trump's apartment is 10,996.39 square feet.

Now, the answer to that question is yes, it was accurate and up-to-date. It shows the size of the apartment at 10,996.39 square feet, signed by Donald J.

Trump.

What happens next? fter working over the weekend on Monday, March 6th, lan Garten writes to manda Miller, in the press office of the Trump Organization, "I handled everything except Trump World Tower and Trump Tower." She responds, "Thank you, lan. I spoke to lan W.," lan Weisselberg, "re: TWT and TT," Trump Tower. "We are going to leave those alone." They weren't going to touch the value of the penthouse.

nd what happens next? On March 10th, 2017, lan Weisselberg and Donald Trump, Jr. certify the accuracy of the Statement of Financial Condition to Mazars, just four days later. That Statement of Financial Condition included a valuation of Mr. Trump's apartment that was 30,000 square feet. This is direct evidence that the inflated penthouse valuation was not an innocent mistake, but an intentional lie.

It's further aided by the fact that a few months later, on May 3rd, 2017, Forbes publishes its article. Donald Trump has been lying about the size of his penthouse. This marks the end of the inflation of the penthouse on the Statement of Financial Condition. The inflation had been publicly disclosed, and they stopped using it in their valuations.

Let's talk a little bit about conspiracy, now.

Courts recognize that, because conspiracies are secretive endeavors, they often have to be inferred from circumstantial evidence, and confirmed by overt acts. Well, that kind of evidence certainly exists in this case, but we also have direct evidence of the scheme to inflate Mr. Trump's net worth.

Michael Cohen testified to this, when he was deposed by defendants. Let's take a look at one portion of that testimony.

(Video played.)

MR. W LL CE: Now, the defendants may argue that you can't believe Mr. Cohen, but his testimony is corroborated by the other evidence in this case, and his testimony is consistent with that of a current Trump organization employee, Patrick Birney. Mr. Birney played a central role in preparing the Statements of Financial Condition starting in 2017. nd what did he say?

" lan Weisselberg told me, Donald like to see it go up."

He likes it to go up, and, "It," I don't think referred to assets. I think it refers to net worth.

So, we have direct testimony from the people involved in the scheme to inflate Donald Trump's net worth, but I would like to talk a little bit about the overt acts that prove this conspiracy, the evidence that demonstrates

that these are not just innocent differences of opinion, or mistakes. To do that, let's take a look at how this valuation plays out, in practice. s the witnesses have explained, these are not just independent valuations, they are part of a scheme to keep Donald Trump's net worth as high as possible.

So, let's take a look at what happened in 2015. Three properties made big swings in that year. Seven Springs, 40 Wall, and the triplex penthouse. Those swings were connected, designed to prop up Donald Trump's net worth, and hit the target that Mr. Trump wanted to hit. The defendants engaged in a shell game.

The value of Seven Springs dropped by $235 million, because of an appraisal done in connection with the conservation easement. To prop up Mr. Trump's overall net worth, Jeff McConney and lan Weisselberg removed the individual disclosure of value from Seven Springs in the statement, and lumped it into a category with the triplex apartment. They then inflated the apartment by $127 million. Separately, McConney and Mr. Weisselberg added $75 million to the value of 40 Wall, reducing the gap to just 33 million, but each of these valuations was independently deceptive, and I'll walk you through some of the examples.

Now, the process for preparing the Statement of

Financial Condition, again, with Seven Springs valued at 291 million, the triplex valued at 200 million, and Wall Street, 40 Wall Street, valued at 660 million. The process kicks off with Jeff McConney and Donald Bender, at Mazars. This is the first of a number of emails with spreadsheets for back-up for DJT's SOFC.

"This one has been marked up, the 6/30/2014 SOFC, before lan's comments. I should be talking to him tomorrow morning."

ttached to this email we see Mr. McConney's hand-marked-up valuations; his indications of what the values will be, in 2015. He also marks up the text in the draft SOFC. So, let's see what he writes for Seven Springs.

The mansion at Seven Springs, you can see the value is set at $291 million. You can see Mr. McConney's handwritten notation, "Okay." The value is going to stay at $291 million, but by the time the statement is finalized in March of 2016, that valuation is no longer what they are going to use. Why? Because of that easement donation. In order to get the tax deduction from that donation, Mr. Trump had to obtain an appraisal from Cushman & Wakefield. Cushman & Wakefield valued the entire economic value of Seven Springs at $56 million, even before placing the easement. That includes all the development rights the

defendants held on that property.

So, what happens? Seven Springs is no longer $291 million. Instead, it gets crossed off as an independent valuation. It then gets buried in the Other ssets category. You can see it right here, $557 million. How do we know that Seven Springs got included in that category? We have the final supporting data spreadsheet. s you can see, Seven Springs, per easement, $56 million.

So where does the statement end? In 2014, Seven Springs is broken out as a separate property with its own valuation of $291 million. In 2015, after the value was dropped, they removed the independent valuation. They move it into a new category, and lump it together with other assets. No one reading the statement would know that it dropped, year over year.

So, how do they cover it up? Well, the first step involves Mr. Trump's triplex apartment. The triplex begins the year valued at $200 million. This is where it's been, for many years. You can already see it has the inflated 300,000 [sic] square feet, and it's priced at $6,700 per square foot. To get the number for the penthouse up, the defendants find a new comp., and value it at $10,900 per square foot, for a total value of $327,000, a rise of $127 million.

Now, we already know that that 30,000 square foot

number is inflated. The 10,900 number is also inflated. Part of it is because there was a record-breaking sale at 157 that was in no way comparable to Mr. Trump's 40-year-old apartment. But, even the 10,900 number is wrong. That's not what an apartment sold for, at 157. That's the square footage of the apartment that got sold. The actual price was below $10,000, so about a thousand dollars less, meaning another 30,000 of this is just from not using the actual sales price of the square footage number. gain, inflating the overall value, and putting it in a category to hide the drop in Seven Springs.

So, on the statement, they eventually need to make up more of the difference with 40 Wall Street. 40 Wall Street starts the 2015 process valued at $660 million. We can see, right here. It's handwritten in by Mr. McConney. Now, how did they get to that $660 million? You can see. They actually disclose that there's a Cushman & Wakefield appraisal done June 2015 for loan refinancing with Ladder Capital at $540 million. This is the initial spreadsheet that goes to Mazars.

Mr. McConney, however, adds value. There's been additional rental activity in vacant spaces, including a retail space that gets leased to Dean & Deluca that generates another $1.4 million in a given year, and is part of the $120 million evaluation they want to add to 40 Wall.

Well, what's the problem with adding Dean & Deluca? It's already included in the appraisal that had been done by Cushman & Wakefield, but the defendants and Mr. McConney only send Mazars an excerpt of that appraisal, the first 15 pages, so he does not see that includes a Dean & Deluca lease, and it does not include the fact that they had a different cap rate, as compared to what Mr. McConney is using.

So, by the end, they use a different technique to inflate the value of 40 Wall Street, and add another $75 million. They say that they have done their own analysis, and it's based on information provided by Douglas Larson of Cushman & Wakefield in November of 2015, and February of 2016. Now, you can see, these are just general questions that they have asked him about various market activity. Now, who is Doug Larson? Doug Larson is the same appraiser who did the valuation of 40 Wall Street, and valued it at $540 million. He never gave them grounds to increase the value like that.

So, where does this leave us, in the end? Seven Springs goes down. It gets combined with the triplex, which goes up, and 40 Wall goes up, as well. So, from December 2015 to March 2016, the defendants increase the value of the triplex and 40 Wall by 202 million, and that's on top of the 120 million they had already added to 40

Wall, to the 40 Wall appraisal in the first draft. Through this process, Mr. McConney and Mr. Weisselberg take a $235 million drop in the value of the Seven Springs, and turn it into a $77 million increase in Mr. Trump's net worth.

This was their process. This was their conspiracy.

So, why did defendants do this? Beyond just a place on the Forbes billionaires list, what does a net worth of over $6 billion gain Donald Trump? The simple answer is, the defendant knew that a high-net-worth was necessary to obtain and maintain certain financial benefits. When he was first looking for financing on Doral, Donald and Ivanka Trump had a meeting with the CEO of Deutsche Bank. fter the meeting, Donald sent a letter with his financial statement attached.

"I'm pleased to enclose the recently completed financial statement of Donald J. Trump. Hopefully, you will be impressed. I'm also including a letter that establishes my grant value, which is not included in my net worth statement."

Donald Trump knew exactly how the statement was prepared, and he was using it in search of a loan with a lower rate. Later that year, after negotiating with the commercial real estate group at Deutsche Bank, the Trump Organization began speaking to the private wealth

management group at Deutsche Bank, and the group offered significantly lower interest rates, but required the loan to be on recourse with a personal guarantee, and proof of guarantors' net worth, but those rates were worth it.

When the Trump Organization first got the offer from the private wealth group, Ivanka Trump told lan Weisselberg and others, "It doesn't get any better than this." She didn't even want to negotiate on it. But their in-house lawyer, Jason Greenblatt, immediately saw a problem: The net worth requirement.

Now, the net worth requirement, the proposal from Deutsche Bank was $3 billion. It may be surprising that a $3 billion net worth covenant would be a problem for Mr. Trump, who claimed a fortune well north of that every year from 2011 to 2021, but nevertheless, Ivanka Trump tried to negotiate the number down to 2 billion, before agreeing to 2.5 billion.

So, year after year, on loan after loan, the defendants misrepresented Mr. Trump's net worth to obtain and maintain those favorable interest rates. In fact, the value of those low interest rates was so profound, they formed the primary basis for our disgorgement claims. s our banking expert, Michael McCarty, will demonstrate, the use of the false Statements of Financial Condition saved defendants tens of millions of dollars, and those savings

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came in every year after the July 2014 statute of limitations date, set by the First Department.

That benefit is measured by the difference between the interest rates the Trump Organization could have obtained, if their loans were treated as regular commercial real estate loans, and the interest rates they actually obtained, using the false financial statements with the private wealth management groups, the spread was vast, and it lasted for years.

On Doral, after July 2014, the difference in the interest rates was often more than 8 percent, including 8.2 percent in 2022. On Chicago, the delta after July 2014 ranged from 3 to 5 percent, with the broadest spread in 2022, when it reached 5.45 percent. On OPO, the spread was off around 5 or 6 percent, and was at its widest in 2021.

When combined with the other loans and transactions entered into by defendants, the direct financial benefit was well north of $100 million. With prejudgment interest, the total disgorgement amount is well north of $250 million. We'll ask the Court to recoup that entire amount.

So, these are the nuts and the bolts of our case; the how, what, why, and where of the defendants' fraud. The defendants' challenge this proceeding is to question why the case even exists at all; to complain about the

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ttorney General reaching in private transactions; that the transactions were profitable; and that the banks and insurers, that those financial institutions were sophisticated parties.

But, this isn't business as usual, and this isn't how sophisticated parties deal with each other, and even if it was, there's a reason the legislature gave the ttorney General the authority, under Executive Law 6312, to step in and police fraud and illegality in the conduct of business in New York, because these are not victimless crimes. By hiding their true resources, defendants hid their weaknesses. They convinced they banks to take on hidden risk, risk to the tune of hundreds of millions of dollars.

Our financial system, both in this state and in this country, depend on honesty to ensure their safety and soundness. We have already seen the impacts to the banking system when financial institutions take on hidden risk in 2008, and again, just this past year. The defendant's claim they never missed a payment and never defaulted on a loan, but they looked to escape those deals. They sold the Old Post Office Hotel, a property they said they would hold for decades. They refinanced their Doral loan with a small lender in California, at a higher interest rate. Those are not the actions of a market participant who plays by the rules. The defendants got caught lying, and while it may

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be one thing to exaggerate for Forbes magazine or a television audience, they cannot do it while conducting business in the State of New York.

For that reason, your Honor should bar them from further business in the State of New York, and reclaim their ill-gotten gains.

Thank you.

THE COURT: When Mr. Robert objected before, I said that I don't believe that's a correct statement. Something like that. I just want to make clear, I'm not doubting your facts. I assume these are completely correct. I just doubt the legal conclusion you reached.

Would defendants like to make an opening statement?

MR. KISE: Yes, your Honor.

THE COURT: Please.

(Whereupon, there was a pause in the proceedings.)

MR. KISE: Can you here me now?

THE COURT: Yes. I hope every else can. s long as there's no feedback. I'm already getting enough feedback about this case.

MR. KISE: Certainly, your Honor. You can hear me your Honor, now?

THE COURT: Very well.

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MR. KISE: Okay. Thank you. Sorry about that. s you know I'm not, technologically, the wizard.

So, I'm going to make an opening statement on behalf of most of the defendants. s we have done in the past, Mr. Robert is going to add a few comments on behalf of his clients.

So, you heard an interesting story from the government. Needless to say, we have a very different picture of the evidence. We think that the evidence is going to establish many things, and often we are looking at the same evidence, and often we are looking at different evidence, but in sum, we think it's going to establish many things very different than what the government has laid out.

t the outset, I also -- at the outset of the trial, your Honor, I do want to renew our objection on the limitations issues, and the disgorgement. That is, the introduction of evidence prior to the July 13, 2014 cutoff date. I think the 2011 loan discussions that Mr. Wallace just referenced would fall within ambit of that. I realize that opening statements are not evidentiary, but I want to just make sure it's clear, on the record. I don't mean to burden the Court with the objection, but I will, on that. Same with disgorgement. We just renew our objection with regard to the disgorgement evidence.

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

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

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

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

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

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

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

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

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

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

Their agreement, the evidence is going to show,

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

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

(Continued on the next page.)

MR. KISE: Importantly, it points out, as Mr. Wallace noted, it represents fairly, in all material respects, the financial condition of the guarantor at the time period presented.

This is important because if the statements were not materially false then this certification does not constitute any evidence of any violations, of either 63(12) or the underlying criminal statutes, that are being presented, and, I don't think, again, that that has been decided.

Materiality is an important question that needs to be decided by this Court in this proceeding. The statements were materially accurate. First, the evidence is going to show that all the statement values comply with G P and SC 274. That is a very important point with respect to intent and materiality, that all the valuations were derived in compliance with SC 274.

Importantly, that all of the statements and the associated Independent ccountant's Compilation Board incorporated unequivocal disclaimers placing the user on notice as to reliance. This evidence will go directly to intent. This evidence will go directly to materiality and directly to reliance.

So, the governing standard is, as I've been saying, ccounting Standards Codification 274, SC 274.

The evidence is going to show that personal financial statements shall present assets and their estimated current values and that ECV, estimated current value, is not the same as fair value or market value, that there is great latitude in valuation methodology. There is no one generally accepted procedure in determining the estimated current value. It does not require a specific method to be used and there are many ways to value assets and all are accurate and acceptable, even if they yield different results.

So, the statements fit within SC 274. Now, we're talking about intent materiality, reliance. Those statements fit within SC 274. There may be wide variations between different valuations, but, if comport with SC 274 that alone we believe the evidence demonstrates intent. It certainly negates materiality.

In accordance with this wide latitude, specifically, the provision that I have up there SC 274-10-556 provides one of the myriad available bases for determining the value of property and, as you can see, the evidence is going to show us that one of those ways is the net realizable value of the property placed on planned courses of action.

This evidence is going to speak directly to the Seven Springs example that Mr. Wallace spoke so much

about. You went between 2015 and 2016 from a period active development -- that's the plain course of action for the property -- to a different approach, which is a conservation easement. Those are fundamentally different ways to look at property.

One is active valuation for active development. The other is for purpose of conservation. There's all sorts of rules that govern how you calculate the value of the property for conservation easement versus how you value for active development.

So, while the government intends to introduce evidence, clearly from their opening, that that change was somehow sinister, that there was some nefarious intent, there was no nefarious intent. It simply reflects the change in a complex, sophisticated real estate development organization where you move from active development to a conservation easement approach. ll acceptable under SC 274, the evidence will show.

The SC 274 approved methods do not hinge substantially on current market conditions but focus on a long-term perspective. That is current value. It is not intended to be a market value model. Importantly, appraisals are simply not the only appropriation valuation method.

The 40 Wall Street example you heard Mr. Wallace

speak about, again, back to an appraisal. The government continues to try and convince the Court that that's the only appropriate methodology. SC 274 simply does not provide that, that we don't have to rely necessarily on appraisals, and, it's not dispositive. There are many ways and, as long as, again, the valuations fit within the confines of G P and SC 274, there can be no intent. There can be no material departure.

We believe that the evidence will show both of those things. The compliance with SC 274 will demonstrate no intent to defraud, and compliance with SC 274 will demonstrate no material inaccuracies.

The Court will hear, finally, from Professor Eli Bartov, at the NYU Stern School of Business. Professor Bartov, among other things, will present evidence relating to these points on SC 274, that there is no such thing as objective valuation in G P.

That valuation is an opinion about price and is subjective, and, which valuation methodology to choose and which assumptions to apply, depends on many, many factors. So, estimated current value under SC 274, you'll hear him testify, places very little weight on current market conditions.

That evidence is important, irrespective of the Court's decision on summary judgment, because it goes to

intent. It goes to materiality and, ultimately, we say all of it goes to reliance. gain, compliance with SC 274 and G P negates essential elements and, the evidence will show, negates essential elements of the People's case.

The Court will also hear from Professor Laposa, who will testify about the fact that disagreements, essentially, as to SOFC valuations does not establish any fraud. There are disparate but legitimate valuations of specific property that co-exist. The mere existence of these disparate valuations for a given property does not, in itself, establish any specific valuations as inaccurate, inflated or, as we would say, intentionally fraudulent.

This is the essence of the commercial real estate market place. Buyers have a view. Sellers have a view. Banks have a view. None of them are wrong. They're just different. When a seller or owner of a property takes the position and presents his or her opinion of the value of that property and discloses the nature of that valuation and presents that, in accordance with Generally ccepted ccounting Principles and SC 274, there can be no intentional fraud. There can be no material departure, and, there certainly is no reliance.

The statements, as you will hear Professor

Bartov testify, are the beginning, not the end, of a complex and highly subjective valuation process that users, like banks, sophisticated banks, and insurance companies, engage in as they perform their own due diligence.

Banks and insurers know that the statements are estimates. They're not designed to be absolutes, and, again, when the statements comply with G P, when they comply with SC 274, that negates fully any claim of intentional fraud.

Materiality is an essential element, as the Court has recognized and the statutes make clear. Two examples of the statutes that are at issue here. The issuance of a false financial statement occurs when something is inaccurate in a material respect.

Insurance fraud occurs when there's some -- any statement containing the materially false information. We believe the evidence will show, based on what I've said, and beyond, that there is no material inaccuracy. There is no materially false statement.

The Compliance Certificate, as I observed earlier, using that example, also demonstrates the importance and significant centrality of materiality. The foregoing presents fairly, in all material respects. That material inaccuracy is the standard. That cannot be

read out of the certificate.

The guarantor made that representation. The guarantor did not say this is absolutely, positively inaccurate. This is in accordance with a specific appraiser's view of the property. This is in accordance with a specific objective for the property.

What the guarantor said in that certification is that the foregoing presents fairly, in all material respects, the financial position of the guarantor of the period presented, and that is a holistic concept. That is not an asset-by-asset concept. G P also incorporates materiality and does apply material items.

You'll hear from Professor Bartov. None of the items on the statement identified by the ttorney General as statements or omissions were departures from G P. ny such items were, therefore, immaterial from the viewpoint of the sophisticated bank and underwriters who received the statements.

The Independent ccountant's Compilation Report and the statement notes are a unified presentation. This is the disclaimers that you've heard so much about. Here, again, they are fundamental to our concept of intent, materiality, and reliance.

Mr. Flemmons, a former SEC chief accountant will testify that ICP standards dictate that the Independent

ccountant's Report and Statement of Financial Condition are issued together and mutually dependent. Those statements are not relied upon in a vacuum. They must be reviewed in concert with the ccountant's Report, that the two are issued together, cross-reference each other and, therefore, could not reasonably have been viewed by users as separate documents that were not dependent on each other.

So, taking just the statement notes, setting aside the Independent ccountant's Compilation Report, just taking the statement notes. The evidence will show, among other disclaimers, there were clear, bright lines presented to the users, in this case, the sophisticated banks and insurance companies.

Considerable judgment is necessary to interpret market data and develop the related estimates of current value. ccordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. I'm going to come back to that in a minute.

The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current values that you heard so much about. So, right here, in the statements, the statements

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

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

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

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

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

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

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

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

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

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

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

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

every day in the city, and, these numbers that are provided by the owner in accordance with G P and in accordance with SC 274 are presented as their evidence.

The bank did an even deeper dive on certain properties. s this page reflects, the bank conducted a much more in-depth analysis of what it described as four trophy properties. gain, others, other than the defendants, believe their properties are trophy properties. They are Trump Tower, Niketown, 40 Wall Street, and Trump Park venue.

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

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

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

$500 million. Both of those numbers, the evidence will show, will differ from other appraisals and other valuations. That doesn't make the bank's number fraudulent any more than it makes the defendant's number fraudulent.

Everyone has a different opinion as to value. That is the sum and substance of the evidence; and, as long as those opinions are formulated in a way that comply with SC 274 and G P and they're presented appropriately, there can be no intent. There can be no materiality; and, here, particularly with the disclaimers and with the evidence that will be-- the record will be replete with, of independent analyses done by the user, by Deutsche Bank, there can be no reliance; but, the Court not need take the defendant's word for this.

The evidence will include testimony from actual individuals involved in the loan decisions, the very decisions that the ttorney General is disputing, the very transactions that the ttorney General is focusing on.

These individuals are Thomas Sullivan, David Williams, Emily Pereless and Rosemary Vrablic, all of them were involved in the loan decisions. ll of them were involved, in some shape or fashion, in the process by which Deutsche Bank engaged in conducting its own

analysis and in reaching conclusions.

They will testify that Deutsche Bank conducted, as they're required to, their own independent risk analysis, that they did not rely on the statements. They will testify that the valuation disparities are not falsity or fraud, not evidence of any intent to defraud.

Indeed, their own independent analysis, as I noted, demonstrated a $2 billion difference between the client reported and their own numbers, $2 billion difference. Yet, they proceeded with the transaction. They were eager to proceed with the transaction, wisely so, because they made well over $100 million in interest. They made a good risk/benefit calculation.

The evidence will show that is exactly why they did, what they did, and that is how they proceeded. They fully anticipated that the statements provided by the borrower were going to be different than their values, and, their testimony will demonstrate and reflect their view that the statements were not misleading.

The bank officers will also testify that President Trump was overqualified for the sub-loans, that his net worth far exceeded the minimum required to be a private wealth customer. The ttorney General presents, as evidence that they intend to present, as evidence of motive, that somehow the defendants were seeking access

to loan terms that they couldn't otherwise obtain; but, the testimony of the bank officers, themselves, involved in the transaction, will demonstrate that President Trump was overqualified for these loans, by far.

Their testimony also will reflect that President Trump didn't violate the loan agreements by making the certifications that President Trump did not default, that President Trump did not make any false statements, and, that the alleged valuation disparities in the statements did not impact the loan approval or pricing; and, the testimony of the ttorney General's expert is beyond speculative in that regard.

There's no actual connectivity between what the bank's independent sophisticated risk analysis was and the basis for the disgorgement. They're fundamentally disconnected, and, we believe the evidence will demonstrate there is a fundamental lack of proof on any of the disgorgement claims, particularly the evidence of their purported expert.

So, the summation of what the evidence will establish is, as you've heard me say repeatedly, the statements were materially accurate. They complied with G P, SC 274. There's, therefore, no evidence of intent to defraud. The compliance with the acceptable governing standards and the adherence to those standards

demonstrates that-- will demonstrate that the defendants had no intent to defraud.

There's also no evidence of any agreement, an essential element of conspiracy claim, other than, as I mentioned, from the serial liar, Mr. Cohen. The evidence will establish there was no breach, no late payments, no defaults. The banks profited minorly from their sophisticated risk-benefit analysis, that those sophisticated banks and insurers were never mislead about anything. Importantly, that the disclaimers notified the users to conduct their own independent underwriting analysis in clear terms, fully negating intent.

nyone intending to defraud does not say to the other side, please conduct your own analysis. No, we put them on notice, fully on notice through those disclaimers. The language is unequivocal. The evidence will suggest there is no unjust benefits or profits of the defendants. They were fully overqualified for the loan.

The bank's independent underwriting analysis is what created the pricing and loan terms, not the Statements of Financial Condition and certainly not the certifications, which came long after, in most cases, the loans that the ttorney General seeks to render at issue here, despite the clear bar of the Statute of

Limitations.

In sum, there was no illegality. There was no fraud. There are no victims; and, we believe the evidence will demonstrate the ttorney General has no case.

Thank you.

THE COURT: I just want to ask you two things. You said, I think twice, that the banks were required to do due diligence. Required by who or what?

MR. KISE: You'll hear from their experts. Mr. Unell will come in to testify about the applicable OCC regulations. That's testimony we think, frankly, should have been incorporated in the summary judgment process. Respectfully, I understand it wasn't but, certainly, that testimony is going to be very poignant and very significant here.

THE COURT: I think you suggested that under Executive Law Section 63(12) disgorgement is not available as a remedy.

Is that your position?

MR. KISE: I preserve that as an objection. I understand your Honor's ruling fully. I just didn't preserve that as an objection but yes. Given your Honor's ruling, we'll certainly speak to that evidence that the ttorney General intends to present. We'll

rebut that evidence directly.

THE COURT: I'm not talking about evidence. I'm talking about point of law and it's not a question as to what I ruled on. It's a question of what the First Department, maybe the Court of ppeals, has been saying.

There's case law that says disgorgement is an available remedy in a 63(12) case. Isn't that what the law says?

MR. KISE: We respectfully disagree with your Honor. We'll take that up with the ppellate Court. I'm not belaboring the point, and, I'm just making note that we had that legal objection, and, when the time comes, we'll make minor objections that we need to to preserve our ppellate record and we will move on.

THE COURT: Thank you.

MR. KISE: Thank you.

THE COURT: We've been going for an hour and 40 minutes. I believe a lot of you have been sitting here for a lot longer than that. I said one of the few things I'd say is, let's take a ten-minute break.

(Recess taken.)

(Continued on the following page..)

THE COURT: Tommy's announcements are probably pretty loud for you. If you are standing right next to him, it's deafening.

Can I see just the attorneys for 60 seconds? Come on up to the bench.

(Whereupon, an off-the-record discussion took place at the bench.)

THE COURT: Do defendants have other opening statements from other clients?

(Whereupon, there was a pause in the proceedings.)

MS. H BB : No feedback?

THE COURT: No feedback.

MS. H BB : I have a feeling my voice will boom anyway.

How are you, your Honor?

THE COURT: I'm good. How are you?

MS. H BB : Well, we have been doing this for three years. I first want to say that I incorporate everything my colleague said, and Cliff Robert will speak after me, on behalf of the children. s you know, I represent other individuals in this case, lan Weisselberg Jeff McConney, the President, and certain entities of the Trump Organization.

I will start by saying that I wasn't planning to

speak today until I saw what the attorney general said outside, and when I saw the presentation that was just put on by Mr. Wallace.

First, I want to say that this case was brought prior to the ttorney General sitting in office, as we know. That is part of this case, unfortunately, because it is a public case, as your Honor has astutely said. That's why we have press here. That's why we are all sitting here, right now, three years later. This case could have been brought before.

I would like to start with some -- I'm going to go through Mr. Wallace's testimony first, but before I do that, I just want to remind everyone that Ms. James said that she was going to come into the ttorney General's office, and she was going to get Trump. She was going to go to work, get Trump, and then go home. This is a case brought by the ttorney General, so it is part of this case.

Michael Cohen's testimony was played by Mr. Wallace.

Thank you for playing that, actually.

I look forward to having Mr. Cohen take the stand, because when he takes the stand, I'll play the rest of the testimony where Michael Cohen, who is a convicted felon, who is a liar, by the Southern District of New York,

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said that the Statement of Financial Condition took three days, from start to finish. He said that the Statement of Financial Condition, he did with lan Weisselberg alone, and that will be played, as well.

So, thank you for your part, but I will be putting on mine.

The ttorney General's office would like you to believe that Donald Trump and his family had a conspiracy. When they put in their Statement of Financial Condition, there were -- let's talk about their worth. If Donald Trump and his family wanted to put in a conspiracy, wanted to defraud banks, as the ttorney General's Office would have you believe, then there would have been brand. There would have been the rights to The pprentice. There would have been the same brand that got that man elected for president.

Now, there's lot of people in this room that probably don't like that, and I believe that's why we are here. But, it's a fact. We are attacking a sitting president, and two of his children, and his employees, for a Statement of Financial Condition which is, frankly, worth less than what they are worth.

These are sophisticated lenders, your Honor. To prove their case, they have to show that there was intent to defraud lenders. These lenders are Deutsche Bank. They

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are major. We have other lenders we will go through, and I'll let my colleague go through it in excruciating detail, but let me be clear: These lenders made money. They made money. They were not defrauded, and there is no merican in this country that has ever given a value of their property to a bank for a loan, and had it be taken at face value. nd frankly, if that ever is the case, then those banks should be investigated, not the individuals that valued their great companies, frankly, at less than what they are worth.

Let me give you a few examples, your Honor. You pointed out, in your summary judgment order, that Mar- -Lago was worth $18 million. How? How is that possible?

Now, I know Ms. Greenfield is probably writing you a note right now to say that that is a tax assessed value, so let me just get right to that. tax assessment is different than the market value of the property, and I want the press to understand that, your Honor, and I want -- I hope that by the end of this hearing, I truly hope that you can have an open mind and hear that that is the case.

They are conflating issues. They are saying that when you go for a tax assessment -- and I ask your Honor, and I ask all the merican people that are, frankly, going

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to hear about this: When you have a home, and you ask for your tax assessment, no one is giving that top dollar. That's not accurate. The value is the value, and the value of anything -- and they teach this, actually, at HBS, and at many other schools. They say, the value is what someone is willing to pay.

The Trump properties are Mona Lisa properties, your Honor. So, I'll submit that while you want to look at a tax document, we have experts, renowned experts, who have said that properties like Mar- -Lago are worth over a billion dollars, $1.5 billion, and I assure you that there is a person out there that would buy that property, that spectacular property, for way over a billion dollars. That is not fraud. That is real estate.

Further, I would like to talk about the one thing that the G conveniently didn't bring up: WeiserMazars. Let's discuss Weiser. WeiserMazars is a very well-known accounting firm in the State of New York. WeiserMazars, in their own, in their own agreement with the Trump Organization stated, and I'm going to read it in, "Our record will include the following," I quote, "Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the Statement of Financial Condition, users of this personal financial statement should recognize that they may reach

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different conclusions about the financial condition of Donald J. Trump if they had access to a revised Statement of Financial Condition prepared in conformity with accounting principles generally accepted in the United States of merica."

I know what everyone is thinking. That's the retainer with Trump; okay? Let's talk about what was given to the banks. What was -- like, this Statement of Financial Condition. What was given? Here is the cover page. Page one after the cover page is one page with a disclaimer stating, "Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the Statement of Financial Conditions, users of this personal financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised Statement of Financial Condition prepared in conformity with accounting principles generally accepted in the United States of merica."

So, what happened? There was an investigation of Mazars, or the G reaches out to Mazars and puts them under pressure, and we get a statement saying that they no longer can represent the Trump Organization. But that same statement that we received -- and I was there the day we

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received it -- stated that they could not articulate any flaws that the Trump organization had done. nd why is that? Because Donald Bender, who will take the stand as their first, first representative, their strongest guy, Donald Bender will have you believe that, as the accountant who acted effectively as the in-house accountant for this organization, his hands are clean.

He had unfettered access, your Honor. We'll ask him what he did, and we'll prove that he had unfettered access to the Trump organization. He could come in, he could go out. He could get on the computers. We didn't even monitor when he was on, looking through the records. nd your Honor, you and I went through, as you recall, back in the special proceeding, when I gave over thousands of documents, thousands, when we opened up the Trump organization, when we opened up his homes and we were willing to cooperate, and did, and there was nothing that turned up that was in direct conflict of what I'm saying now.

So, the ttorney General is going after kids, and I'll let Cliff, who represents the kids, go to that, but I will also say that their representation that a phone call with an accounting department asking for status of zoning, is not a conspiracy. It's doing business. nybody with real estate understanding -- and I personally come from a

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family of real estate, so I get this, but to the merican people, to the people, maybe at the ttorney General's office, that aren't aware of how real estate companies operate, this is normal practice. The banks are aware, and the banks do their own values, and do their own investigations, and frankly, if they don't, then they are in violation themselves.

More examples of properties that were undervalued. Doral. It was stated on the Statement of Financial Condition for $350 million, your Honor. nyone who follows golf knows that Doral has one of the best golf courses in the country. I've had the pleasure of visiting these properties, sir. They are not normal properties. Doral would sell for at least a billion dollars. Mar- -Lago, at least a billion dollars. Look at OPO. OPO did sell for 100 million more than what was stated on the Statement of Financial Condition. Very point. Very point, sir. Ten times the value that was stated on the Statement of Financial Condition. Doral has 1500 units that have never been developed.

The list could go on and on, because real estate is malleable, your Honor. Real estate changes. The values change, but there was absolutely no fraud, no intent to defraud, no conspiracy.

I would just like to close by saying that I

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believe -- well, first, before I do that, I do want to thank you, your Honor, for one thing you said when you opened up, which was explaining to the press, the jury issue, because I personally have been dealing with that myself, and 6312, and the fact that we don't have a jury, and I know my client did want a jury. I want to say that. But we have addressed that, and I appreciate that you clarified, for the Court. So thank you, for that, from me.

THE COURT: You're welcome.

MS. H BB : Well, these are sophisticated banks. These are sophisticated lenders. They made over $100 million, and there was no intent to defraud. Period, the end. The disgorgement only came, which is what the ttorney General is asking for, after the Trumps sold the property that they undervalued for 250 more than was valued. That's when this case was brought, not two years ago. fter the sale, and that's the number they picked.

Why? Because if you look at the president and his family's worth, if you look at the Trump Organization and all the 850-plus people that work for that beautiful company, you will see that they have never overvalued. The Statement of Financial Condition was disclaimed. It was undervalued, in my opinion, and we'll prove that, through our experts, and the G is setting a very dangerous precedent for all business owners in the State of New York.

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The State of New York, they would have you believe, if you believe your property is worth a million dollars and you list it on Trulia for $1 million, but it sells for 800,000, then you, sir, should be here, and you should be disgorged of your profits, and that is a very dangerous time for our country, and this state.

Thank you, your Honor.

THE COURT: Ms. Habba, as you referenced, we have been dealing with, to use a slang term, each other for years, and if it's okay with you, and because we don't have a jury, or at least a formal jury, I would like to just go over a few of the things that you said. Is that okay?

MS. H BB : Of course, your Honor.

THE COURT: One, this is not a question, you referred to Mr. Wallace's presentation as testimony. Opening statements are not testimony.

MS. H BB : Opening statement. Yes.

THE COURT: It's just what you intend to prove.

MS. H BB : Yes. Well, I think part of it, your Honor, to be clear, was testimony. He played testimony from some of the witnesses.

THE COURT: You are right.

Next, you brought up the ttorney General's history, motivations, statements.

MS. H BB : Yes.

THE COURT: You had moved to have the entire case dismissed because it's a, quote, witch hunt, which is what the press tends to call it, and I denied that, and I was affirmed by the First Department. So Ms. James' motivations are not an issue in this case any more; are they?

MS. H BB : Well, your Honor, actually I brought a case that was separate from this case against Ms. James for what I believe is constitutionally improper, improper by her office, and I do believe her statements out of court prior to having office, and claiming that she knows what goes on in the Trump Organization, are very important to this case. Unfortunately, it's become the fabric of this country, right now, that these out-of-court statements are part of the case.

Ms. James sat on the court steps before coming in here. I didn't know she was going to do that, but that's part of the schtick, evidently, so I have to address it, and I do believe that that was improper on many levels. I withdrew that case. It was not dismissed.

THE COURT: ll right. We can go back and forth.

MS. H BB : Sure. Of course, your Honor.

THE COURT: We have a few more points to discuss. The valuation of Mar- -Lago, there were very significant easements on the ability to turn it into -- subdivide it

into residences, et cetera, and more importantly, I specifically said, in the summary judgment decision, I'm not valuing or evaluating properties. I believe that there was --

Well, I wouldn't telegraph that, but please, Press, stop saying that I valued it at $18 million. That was a tax assessment. Or, something in that range.

There would have been issues of fact as to what the value was.

MS. H BB : Well, I think, your Honor -- if I may respond?

THE COURT: Yes.

MS. H BB : I think that is an issue of fact, and the fact -- and I'll preserve, as my colleague said, everything on the ppellate Division, but the fact that you drafted a summary judgment motion saying that that was not an issue of fact is exactly what we are appealing, and we'll handle that on the ppellate Division.

THE COURT: Okay. I didn't draft a motion. I drafted a decision.

MS. H BB : Yes, your Honor.

THE COURT: You referred, perhaps obliquely, or maybe more directly, to the million pages of documents that were turned over.

MS. H BB : Yes.

THE COURT: I held one of the defendants in contempt. I fined him $10,000 a day. It was vacated after 11 days, and I was upheld on that, both the contempt finding, and the amount of the fine. So, I don't know why we are --

MS. H BB : Well, I just wanted to bring up the point, your Honor, that after these ten days, despite the fine, which, we obviously went through our procedure, you did recall that after those days, and after my diligent searches and my certifications, we never did find anything that was not previously revealed.

THE COURT: Yes, that's right.

MS. H BB : So my point is, that goes to the good faith and the intent, your Honor.

THE COURT: You never did find anything, but the contempt was because you didn't submit an affidavit that said who looked for what, when, where.

MS. H BB : nd then I did, many times.

THE COURT: nd then you did. Well, but the defendant didn't. You did, I think. But, I don't think the defendant did.

MS. H BB : He did, actually, your Honor.

THE COURT: I don't think he submitted an affidavit saying what he did, when, where, et cetera.

MS. H BB : Right.

THE COURT: You said that at one point, just recently, values change. That's one of the big points in this case. You can't look at property ten years later and say, Well, now look what it's worth. These Statements of Financial Condition were current, current market value, so yes, values change, but the point of the Statements of Financial Condition is what were they worth then? What would a willing seller and willing buyer agree to?

MS. H BB : nd if I may respond?

THE COURT: Sure.

MS. H BB : Saying that the value of Mar- -Lago, then or now, would be worth that -- and I obviously, again, on appeal, so I'm not going to litigate our case between you and me, and give my adversaries the benefit of hearing all of my arguments, but I think that we'll prove that, through our experts. We'll prove that at that time, they were undervalued, in many instances. s I noted, some of these properties are heavy undervalued, and we are forgetting the disclaimer, and also the fact that the Trump brand is worth something.

nd, I know that you addressed it in your summary judgment motion, and I'm not going to get into it now, but we cannot -- look, my point is this, your Honor, and I think that our case will show this: If this was a conspiracy, if we were trying to inflate his value, which

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is worth billions and billions and billions of dollars more than anything he ever took the loan out, and frankly, he was underleveraged, but if you were -- if they are trying to prove that, your Honor, that case falls flat on its face, just by looking at certain things that were not included.

If that was the intent for Forbes magazine, then why wouldn't President Trump say, Put in the brand, put in The pprentice rights, put in the Miss merica, or whatever it was, Universe. Put all that in. Let's inflate it. That didn't happen, your Honor.

THE COURT: The brand value, at least some of the Statements of Financial Condition specifically, expressly said, We are not including brand value. Is that the case? Right?

MS. H BB : nd my point is it was not included, and if he had wanted to inflate, why wouldn't we?

Never mind any of that, your Honor. Everything falls on its face when you look at the WeiserMazars disclaimer, and the sophisticated banks we are dealing with that did their own due diligence.

nd I just submit, your Honor, I don't want to litigate my case with you, only because of the prejudice that that could cause to my client.

THE COURT: My final point is, the disclaimers,

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which understandably, the defendants make a big deal about, first of all, I believe that was part of both the motion to dismiss, and the motion for preliminary injunction. I ruled against that, as a defense. I was upheld both times, but I would just like to explain, basically, what the disclaimers, which were separate from the worth statements, but just talking about the disclaimers, the Mazars disclaimers basically said, We are not sure about all this, look to the Trump Organization, that's where we are getting these figures. So, they were anything but, you know, disclaimers, and you can't even make a disclaimer on behalf of someone else, so I just don't see it.

MS. H BB : Your Honor, I'm actually glad you brought that up. Did if I may?

THE COURT: Sure.

MS. H BB : gain, my experts, my colleagues, who are incredibly bright, they will go into excruciating detail with every witness, and we will bore everyone in this room at length for three months, but if I can just give you the high level of where I disagree with you on that, sir?

THE COURT: Sure.

MS. H BB : It's that, these are compilations. We did not present the Statement of Financial Condition as an audited financial. Period, the end. They are

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compilations. nd again, I go back to my Trulia example. No bank, no lender, takes somebody's value at a compilation, the lowest level. It's not audited. It doesn't proclaim to be. It doesn't proclaim to have been. It never did.

But, on top of the fact that it's a compilation, they put the waiver on the front. On top of that, these banks came in and did their own due diligence. It was not us that did it.

nd, for what its worth, your Honor, we could go all day, I'm sure, and it would be great, but that is the crux of where I disagree with you.

THE COURT: ll right. Is it not the case that, in a layperson's terms -- and we have a lot of lay people out there -- the Mazars disclaimer was basically, We are relying on the Trump Organization?

MS. H BB : No, your Honor.

THE COURT: That's how I read it.

MS. H BB : Well, frankly, the Trump Organization relied on Mazars to come in and do what they did, and they came in. Regardless, they are the accountants. They are the accountants, sir.

THE COURT: Thank you.

MS. H BB : Thank you, your Honor.

THE COURT: nd we have at least one more opening

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statement by the defendants.

(Whereupon, there was a pause in the proceedings.)

MR. ROBERT: Can you hear me, Judge?

THE COURT: Yes. That's pretty good, but keep your voice up.

MR. ROBERT: Okay. Good afternoon, sir. I'll be very brief.

First of all, I want to just say that I echo the statements of Mr. Kise, on behalf of my clients, Eric Trump and Donald Trump, Jr. We reserve all the rights and the objections that Mr. Kise has referenced, but what I want to spend my few moments here talking to you about, your Honor, is what I will respectfully submit that the evidence will show that my clients did in this case, but I actually think, more importantly, what the evidence will show that my clients did not do, in this case.

I don't think it's going to come as a surprise to anyone in this courtroom that I vigorously, on behalf of my clients, disagree with just about everything Mr. Wallace said this morning, but there are two things that I actually do agree with him on, and I actually flagged them, and I put them in red on my pad, because I was shocked that I actually agreed with him about something, and what I agreed with him on were two concepts.

One, that in order for the ttorney General to win her case, she has to show repeated, persistent, illegal acts, and I respectfully submit to this Court, she will not be able to sustain that burden, especially as to Eric Trump and Donald Trump, Jr., and more importantly, what Mr. Wallace said is that you need to judge credibility. Mr. Wallace put it in the context of credibility of denial.

Well, your Honor, it's credibility, in and of itself. You will be the finder of fact. You will hear testimony from Eric Trump. You will hear testimony from Donald Trump, Jr. You will hear them be cross examined by able counsel for the ttorney General, and you will then make a decision as to their veracity.

In addition, you will hear testimony, as Mr. Kise set forth, from the witnesses of Deutsche Bank, and Deutsche Bank's testimony is going to be consistent in that there was never a material misrepresentation made by Eric Trump or Donald Trump, Jr. So, it's not going to just be the credibility of my clients. It's not just going to be the credibility of the president, when he testifies. It's going to be the credibility of people who were actually involved in the transactions, and I don't think that can be overstated.

It's interesting. You know, when we do an opening statement, I think the first rule we learn is, you

want to show the best part of your case because, you know, especially if there was a jury here -- which again, I agree with Ms. Habba, we were entitled to under 6312 -- but very often I'll tell a jury, it's kind of like a road map. I want to tell you where I'm going, and what I think the evidence is going to prove.

Well, I think it's fascinating that in the ttorney General's opening, their major linchpin is Michael Cohen. Now, as the Court will hear, he is actually on their first -- I think the first six witnesses, maybe the first seven. So, when you talk about credibility, you are going to have a guy who lies to everyone; who is a convicted felon; who allocuted, very specifically in Judge Pauley's courtroom, which we can probably see if we look out the window, and he is a fixture of what their case is about.

Now, they played you a snippet of Eric Trump, which quite frankly I thought was in incredibly poor taste, and really misleading. That snippet has to do with Mr. Trump honestly asking if he recalls a 2021 conversation. What they didn't show is the rest of his testimony, where he goes through what exactly it is he does at the Trump Organization, and the fact that he and Donald Trump, Jr. spent their life working for their dad, learning from their dad. When their dad assumed the office of being

the 45th President of the United States in 2017, Eric and Don then continued to grow the business, Eric in an operational standpoint; Don expanding what the company was doing.

But, as you are going to hear, and as the testimony from Eric Trump's deposition -- and I'll read from it, page 32, lines 17 and 18:

"I was focused on pouring concrete, not accounting."

Now, let's be clear. Eric Trump and Donald Trump, Jr. are not walking away from the Statements of Financial Condition. Let's be clear. There were no material inaccuracies. ll of the statements and certifications signed by Donald Trump, Jr. and Eric Trump are clear that it talked about no material misrepresentations. This is not a situation where someone signs an affidavit, and they're attesting that every single fact in there is true.

I would ask your Honor to think about it in terms of, it's no different from an affidavit where the affiant says, I believe the following to be true, in all material respects.

That's what they did here, and it is clear, and our evidence will show, our experts will show, Mr. Kise went through, in painstaking detail, that they were not

materially -- there was nothing materially wrong with them.

nd again, you are not taking my word. You will take the word of an NYU Stern School of Business professor. You will take the word of a senior person who used to work at the SEC.

(Continued on the next page.)

MR. ROBERT: But even though we're not running away from these statements of financial condition, as I started my opening, I want to submit to you what the evidence will show my clients didn't do and there's no refuting it. There's not any amount of snippets Mr. Wallace can play, even taken out of context, that will disprove, one, they were not involved in the creation and preparation of the SOFC.

Two, they did not assemble the backup for the SOFC. Three, they did not review the SOFC supporting data. Four, they did not perform the calculations used in the SOFC; and, five, they did not review those calculations after they were done. Others created and prepared the SOFC; and, for those years, when they signed documents dealing with financial matters, they relied on the work product of others, which is not anything that should come as a surprise to anyone, especially the People, when you're of a level of a company that Mr. Trump were, they weren't the ones with the green accounting hat ongoing through the mountain of documents in the backup.

So, to suggest there is liability that can be attached to them, first of all, from the first foundational issue that there's nothing materially wrong with the statements and, second, the fact that they acted

as appropriately as they should, both in their capacity as executive and in Donald Trump, Jr. as trustee.

Therefore, I respectfully submit that the claims brought by the New York State ttorney General against my client should be dismissed.

I thank you for your time.

THE COURT: Is it the position of all three defendant lawyers that there were no material-- withdrawn. That there were no misstatements in any Statements of Financial Condition?

Is that your position?

MR. ROBERT: You made a ruling in your summary judgment motion. My position was there were no material misstatements because that is what the People must prove and, at least as it relates to my clients, those were the certifications they signed. The words in every single document they signed say the words "material representation."

I'll defer to Mr. Kise as to the others.

THE COURT: Let's talk about, very briefly, that word "material." Let's say there's a statement that $100 million. t what point would you consider something material? Would $20,000 be material?

MR. KISE: Your Honor --

THE COURT: Yes.

MR. KISE: I think this is-- your hypothetical represents the fundamental problem we have, respectfully, with the summary judgment order. You haven't heard the evidence. You haven't heard from Professor Bartov in person. You haven't heard from Mr. Unell. You haven't heard from Mr. Flemmons and I think you owe it to the defendants to listen to this evidence and understand exactly what I was saying. SC 274 --

THE COURT: The evidence, that would be argument. Mr. Bartov has evidence?

MR. KISE: He does have evidence. His opinion on what the governing accounting standards are. I'm not an expert on governing accounting standards. I don't think the Court is. Respectfully, I don't think you're an expert on governing accounting standards.

So, if you have an expert that comes in and tells you this is what the estimated current value is and that is how it's calculated. This is what is material or not, you can agree or disagree but at least give us an opportunity to have a trial where you hear this evidence and make those determinations, because, right now, we haven't gotten there and I would caution your Honor vigorously to -- I understand your hypothetical but I think under these circumstances there's a lot more to the story. There is a lot more layers to this.

The ttorney General wants to make it simple. There is an error here and it's material because we say so. I think we have to at least give these witnesses an opportunity to take the stand and understand what this case is about. If you want to disagree later, that's fine, but, I would say that we've got testimony from folks that understand fully valuations. They understand fully accounting standards, and, it is relevant to intent. It is relevant to materiality.

If I prepare a statement and that statement is in accordance with the Governing ccounting Standards, I cannot see how, possibly, someone can say, even if they disagree with my valuations, that I had intended to defraud. So, maybe you disagree with my valuation but that is an entirely different question.

So, I'd ask the Court to allow us to present the evidence. For example, the differentiation in values, I mean, we have experts that you haven't heard from, and, I don't know we're going to hear from them now based on the way the case is structured.

I mean, the ttorney General has certainly opened the door, in my mind, to valuation issues, but, we don't have to decide that today. I think we need to make sure that the evidence comes into the courtroom in a fulsome way and you hear from witnesses who tell you no,

that is not material. This value is not 18-- back to the hypothetical. This value is not $18 million, it's a billion dollars, whatever the case may be, but, the Court really needs-- and, frankly, I think from the constitutional perspective, owes it to the defendants to at least hear this evidence and allow them to defend themselves.

You're talking about a trial, by the ttorney General's own press conference, is designed to strip them of their New York assets and drive them out of business in New York State. That is a pretty serious thing. That is a pretty serious charge to level against a business that's been one of the most successful employers and one of the most successful real estate developers in New York City.

The message that sends is staggering to the real estate community. That is my opinion, but, I know we're not here to get into my opinions. The record will demonstrate, what we say will demonstrate, and, I ask the Court listen to all that evidence before making that determination.

THE COURT: I intend to be very patient and liberal listening to things. I think the specific disagreement we seem to have is if Professor Bartov reads a document and has a professional opinion about it, to

me, that's not evidence. That's testimony or expert opinion but it's not bringing in new facts. Right?

MR. KISE: Respectfully, your Honor, expert opinion in testimony is evidence. That's what evidence is. It's not a document, but, their opinion is relevant. gain, unless the Court is going to be satisfied that it is an expert on accounting regulations, it is an expert on accounting principles and an expert on OCC regulations --

THE COURT: I think what-- is it stacking a dead horse? I intend to listen to all of this. Whether expert opinion is evidence, again, I just consider it opinion and testimony, but, I wouldn't call it evidence, but, there may be different demonstrations.

MR. KISE: gain, I don't know how to say it any more clearly. We, respectfully, disagree. We think an expert, for example, a valuation expert comes in and says Mar- -Lago is worth a billion dollars and you have taken a position that the tax assessor, without a trial, taken a position that the tax assessor's valuation is more credible but --

THE COURT: I did not judge credibility. You can't do that.

MR. KISE: That is the whole point, your Honor. That is why --

THE COURT: That's why I didn't do it.

MR. KISE: You need to certainly hear when we're talking about criminal standards. We're talking about standards under criminal predicates. Those things must and should be adjudicated with the benefit of expert testimony. There's no way to do it otherwise. It's just not possible. We're all lay people when it comes to some of these things.

I am a lay person. I have an accounting degree but I wouldn't call myself an expert on ICP standards.

THE COURT: Thank you. We have to break in about 15 minutes but let's hear the housekeeping issues that were raised this morning.

MR. MER: Good afternoon. ndrew mer on behalf of the People. We did send a letter this morning raising a couple of issues. I'll set it pretty quickly.

The first issue concerns trial subpoenas that were served literally on the eve of trial on Mazars and Ladder Capital. We think the Court should just quash these subpoenas.

First, they were never served on us, as they're required to be under 2303(a) CPLR 2303(a) but, importantly, as the cases we cite to in our letter demonstrate, you can't use the trial subpoena to reopen discovery.

We've had a note of issue. Discovery is over and these trial subpoenas, in large measure, seek documents that they already tried to obtain through subpoenas during fact discovery and, in any event, you just can't use a trial subpoena on an eve of trial to reopen discovery.

We shouldn't be dealing with these type of issue as we're trying to prepare each day to present evidence to the Court. So, we would ask that we not have to deal with these subpoenas because we'd ask that the Court quash them.

THE COURT: I believe the basic rule is in discovery you find out what there is and subpoenas are for, hey, bring it to court.

MR. MER: Exactly. The second issue concerns Nicholas Haigh.

MR. KISE: re we going to take these one at a time or is he going to do it --

THE COURT: I gather you'd like to speak now to number one?

MR. KISE: It may just get jumbled if we don't.

THE COURT: I understand. I don't know that I'm making a ruling now.

MR. KISE: I understand. I want to make some points and Mr. Robert may also have some points on the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

take depositions of witnesses who we're going to put on and we've made no objection to that. We're working with them to schedule it.

So, we think Mr. Haigh's deposition should go forward on the date Mr. Haigh's counsel agreed to make him available next week.

THE COURT: Defendant, any quick reply?

MR. KISE: Your Honor, yes. First of all, there's no need to take a deposition. If they want to call a witness, they can call a witness and bring that witness in the courtroom. Your Honor pointed out exactly the key elements here. You determined in your ruling that what the bank said or did or thought was irrelevant to liability, to the decision you made but not to the remainder of the case. That's the whole point.

So, we think it's highly relevant to disgorgement, again, the extent I won't belabor but we think it's highly relevant for disgorgement and, so, if this witness is going to testify, if they're going to establish their case then, he's here. We can take him out of order and put him on the stand. There's no problem with that. I just don't see any bases -- Mr. Robert will speak again.

s you know, he's the CPLR expert, not me, but what the banks thought and did does matter and, frankly,

if they want Mr. Haigh to testify, then he needs to come, and, we're prepared to confront him in an open forum, not at some deposition.

The deposition Mr. mer is referencing are new witnesses, people that no one knew about before. They disclosed it the first time on a witness list less than a week before the trial started. They never disclosed him in interrogatories or on a witness list until now.

We had a right to depose them because we don't know anything about their presence but Mr. Haigh, they interviewed Mr. Haigh for three days or more during the investigative process. They know full well what the impact truly is, what he is, why he is.

We deposed Mr. Haigh during the course of discovery. They didn't ask any questions. So, now, they want to come along and insert a deposition of what will, no doubt, be some key witness for them; and, in the middle of a trial, it's wholly improper. There's no procedure for it.

If Mr. Haigh is available, he is available until October 13th, he can certainly come and present his testimony.

THE COURT: Mr. Robert.

MR. ROBERT: You issued an order and there was a lot of back and forth over the last year about the

compressed nature of it but, regardless of that, your order of June 9th said "trial depositions for all nonparty witnesses who are unavailable for trial, as set forth in CPLR 3117 shall be held by July 28, 2023.

We opposed it beforehand. If the ttorney General had any issues prior to that point, they needed to make an application. On July 31st they then filed a note of issue certifying "discovery known to be necessary was completed." gain, because this is a bench trial, because you have tremendous discretion as a result of it, if they're intent-- he may be a rebuttal witness, going back to what I said I agree with Mr. Wallace about, credibility is everything.

Let him come here. Let him take the stand. Let him be subject to the ttorney General's direct, our cross-examination, and this Court can hold that in abeyance, if they then want to use that for purposes of rebuttal, but, in the middle of the trial, you will allow him to take a deposition, not in open court, and not before you, I think is incredibly problematic.

MR. KISE: One other thing I'll add, Your Honor, not to be too pejorative here but it appears there may be a little slight of hand. I note on the ttorney General's initial witnesses on September 8th, just a few weeks ago, the trial was still going to start on

October 2nd. Mr. Haigh was listed as the 37th witness. So, I doubt that they intended for Mr. Haigh to be called before the 13th on their initial list.

So, I don't know what's even changed between then and now. I don't think Mr. Haigh decided to leave the country for three or four weeks on a whim. So, I think they had their opportunity to raise to depose Mr. Haigh. They could have asked questions during our deposition, as Mr. Robert pointed out. Your order gave a specific time period and there's no basis for that.

We're entitled to confront these witnesses in an open courtroom where everyone can see and hear what they have to say.

THE COURT: Quickly.

MR. MER: Certainly, there is no slight of hand. We didn't appreciate the full schedule of Mr. Haigh's travel and we were perfectly prepared to call him out of turn.

THE COURT: For reasons of time.

MR. MER: Sure.

THE COURT: I'm going to allow the deposition. What's sauce for the goose is sauce for the gander. No prejudice. You have a right to confront him in court. If he testifies, you'll have a right to confront him in court. I don't think this is close.

What's the third issue? You can work out the schedule.

MR. MER: Thank you. The third issue concerns a proposal we made. We just haven't gotten a response but I think it's one that will greatly aid the efficiency of the proceedings. We requested that all documents that were produced by any party during the investigative phase in response to our subpoenas be considered authentic to avoid the need to bring in --

MR. KISE: I think we agreed on this already on authenticity. I think we had an agreement on the phone last week on Friday. So, we haven't gotten back. We can work that out. uthenticity.

THE COURT: uthenticity, not necessarily admissibility.

MR. KISE: That's right. That is what we worked out.

THE COURT: I knew this would become a love fest eventually.

MR. MER: One more procedural issue.

THE COURT: Quick.

MR. MER: We now have a designated and counter-designated deposition transcript for a witness we are going to call by video, play her video deposition, and there are some objections that were lodged to certain

designations and we can't cut the video to play in court without knowing how your Honor wants to work out ruling on the objections and what process you want us to follow to submit the designations and the objections, get your ruling, and then we can cut the video and make sure, if you sustain any objections, we leave those portions out.

THE COURT: Submit it with a statement of objections in camera and I'll go over the whole thing. Mr. Kise.

MR. KISE: Let us look at the specifics. Mr. mer is correct. How we intend to proceed is key to how we go about resolving the issue. If I'm understanding, you want us to separately -- first we have to try and work out any objections. To the extent we can't, separately submit those, and we'll do that off trial time.

THE COURT: I mean, we'll do that separate. Of course.

MR. KISE: Prior to the time that the witness's testimony is going to be played?

THE COURT: Of course.

MR. MER: You want a paper copy of the transcript highlighted or you want a video?

THE COURT: Paper copy will do. I'm old school. Have a great lunch. We'll resume at 2:15 and

I'll have a ruling on the first issue by then. See you all then.

(Luncheon recess taken.)

(Continued on the following page..)

THE COURT: First things first. I would like to have a quick sidebar, or you might call it a front bar, with counsel. This will only take minute or two.

(Whereupon, an off-the-record discussion took place at bench.)

THE COURT: I said I would address the first issue that the ttorney General raised, very recently. I'm quashing those subpoenas. It seems clear to me that they are being used as a discovery device. Let's see what we can find out; not, We want you to bring the report of pril 1965, or whatever. So, that's that.

MR. MER: long these lines, your Honor, we did learn that Deutsche Bank was served with a trial subpoena this morning, so I think it makes sense to extend your order to that subpoena, as well.

THE COURT: Well, I would have to see the subpoena and the argument, so, without prejudice, withdrawn.

Okay. re we ready for our first witness?

MR. W LL CE: Your Honor, the People had one issue relating to the first witness, we just wanted to raise. The People's first witness is going to be Donald Bender, from the accounting firm Mazars. One of the primary reasons to have Mr. Bender come in is to bring in the various documents that relate to the Statement of

Financial Condition. There's four primary documents. There's the Statement of Financial Condition; there is the supporting data spreadsheet; there's the engagement letter; and there's the representation letter. So, there's those four documents, for every single year.

Many of them are not objected to, by both parties, and so we would propose that documents that are not subject to objection be entered into evidence, without necessarily having the witness go through each and every single document. For the ones that there are objections to, we'll go through them with the witness.

MR. KISE: I think, your Honor, the best approach -- I mean, again, as we said, we agree as to authenticity, but as to admissibility, I think we need to go document-by-document, because as you know, we have a different view of the timeline here, and it's important for our record to make sure that we preserve those objections.

MR. W LL CE: Let me be clear. We are talking about documents which are listed as, No objection, on the exhibit list.

MR. KISE: If we take it document-by-document, your Honor, it's not going to take very long. I mean, it's pretty simple. So, if we just -- I'm not even sure which four documents he is talking about right now. I'm not saying he is right or wrong. I just think it's much

easier, and a much better flow, for us to just take it document-by-document, and if we waive objection, we waive objection.

MR. W LL CE: The objections have been waived already, so my request is that documents with no objection be moved into evidence.

THE COURT: I don't think we can do that, en masse, without seeing. I think Mr. Kise is correct. One-by-one, hopefully, if they have waived their objections. If they object, you will say, But you waived it, and they will say, Well, we did, or we didn't.

MR. W LL CE: Well, that's fine, but we'll go through each document for every one year, and we'll do that with Mr. Bender.

So, the people call Donald Bender.

Your Honor, I would also -- per our discussion at the pretrial conference, we prepared binders. Three copies for court, and staff, if Ms. Faherty can bring them up.

THE COURT: Sure. You can approach. Bring it up.

MR. W LL CE: Your Honor, I'll say we have prepared, actually, two sets of binders for today. One would be for the Court to have a set of these Statements of Financial Condition, so we prepared a set of binders for that. We'll go through them. We are going to go through

every single document.

We are also presenting an electronic copy of the supporting data spreadsheet, because it's an Excel spreadsheet.

(Whereupon, documents were handed to the Court.)

MR. W LL CE: If we have a moment, Chris, I think we might raise one more issue.

Mr. Kise and I both made presentations, as part of our openings. Does your Honor want us to provide you with copies of those, or should we file it on the docket?

MR. KISE: We can provide copies, but as I'm sure the Court is aware, opening statements are not evidentiary. They have no --

THE COURT: I said that, earlier.

MR. KISE: Right.

MR. W LL CE: Understood.

THE COURT: But I'll take them. Sure. It would be the same thing as just getting a transcript, so.

(Whereupon, a document was handed to the Court.)

D O N L D B E N D E R, after having first been duly sworn, was examined and testified as follows:

THE COURT OFFICER: Please have a seat.

Please state your name and either home or business address, on the record.

THE WITNESS: My name is Donald Bender, and I

live in Woodbury, New York.

THE COURT: I just ask you to keep your voice way up. Talk right into the microphone.

THE WITNESS: I'll try, your Honor.

MR. KISE: Your Honor, not to delay the proceedings, but while we are on the subject of objections, so, with Mr. Bender's testimony, we are going to do the same thing with each witness, if it's okay with your Honor.

s you know, we won an appellate victory in June of this year. We believe that it wiped out 80 percent of the case, based on the statute of limitations. t all events, we object to any testimony that will come in as to Statements of Financial Condition that were prepared, certifications that were made, any questions of this witness. We are going to do this in a blanket way, so we don't interrupt question-by-question, but we just want to state on the record, now, that the witness has been sworn; that we object to testimony coming in that is outside of the claims that should be addressed.

s you know, we have argued that, and we believe that, the ppellate Division ruling supports the fact that eight of the ten transactions, the loan transactions, are not at issue. Only two are, the two that were mentioned at the beginning, but we make a blanket objection to testimony in that regard. We won't interrupt the proceeding.

s to documents, and this is why I was a bit pedantic about document-by-document. We will object, on that basis, document-by-document. To the extent documents come in, because from the ppellate cases that we have reviewed, we have to do that, to preserve the record. We'll make the objection. We'll try and move the case along, but we have to make that objection.

nd then, lastly, if we have agreement, as we have done throughout this case in the depositions, if we have agreement, an objection for one is an objection for all, so that you don't have people popping up, popping up and down, if that's all right with the People. If one of us objects to a document coming in, then we don't all have to stand up and object, to make that record.

THE COURT: Birds of a feather flock together.

MR. KISE: Indeed.

THE COURT: Well, let's not get into a whole discussion about statute of limitations, et cetera. It's my position, and I hope it was clear from the summary judgment decision and order, that it's one thing if your client makes a statement, gets a loan, and the money is transferred, and that's it. It's another thing if the deal is, We'll loan you the money; we want to read your Statement of Financial Condition, and every year you are going to have to send us another Statement of Financial

Condition. If those later statements flow within the statutory period, I certainly consider them relevant.

MR. KISE: I understand your Honor's position, and I think you understand ours with respect to the limitations.

With respect to that latter piece, if we are talking about just certifications that occurred after 2014, then that still would exclude any evidence about the underlying loan transaction that predated the statute of limitations. That's part of --

THE COURT: I think that's right, but the pre-statute of limitations dealings may be relevant for injunctive relief, for their knowledge of things, but we'll have to deal it with it one-by-one.

MR. KISE: We would object to that as well, your Honor.

THE COURT: Okay. Objection overruled, but I will ask the ttorney General to be cognizant of his points, and if there's something, a discrete transaction, obviously that occurred before the limitations period began, then let's not have that in, because I'll exclude it. I won't consider it, anyway.

MR. W LL CE: Fair enough, your Honor. I think that -- I'm not going to speak for this witness, and every witness that's going to come in. We certainly believe that

course of conduct between the parties during a long-standing relationship can have relevance. The statute of limitations is a bar on claims, not on a bar on evidence. If it's too far gone, understood, it could be not relevant anymore, but I think we do this as we go through the case, and we may likely see this on the first document that I show to Mr. Bender.

So, why don't we get started.

THE COURT: Yes.

MR. W LL CE: If that's okay with your Honor.

THE COURT: Please proceed.

DIRECT EX MIN TION

BY MR. W LL CE:

Q Good afternoon, sir.

Good afternoon.

THE COURT: little louder.

THE WITNESS: I'll try.

Good afternoon.

THE COURT: Better.

Q Since there's been some colloquy, could you please state your name again, for the record?

Donald Bender.

Q Mr. Bender, are you taking any medication that we should just be aware of, during the course of your testimony today?

I'm just on normal medications for blood pressure, prostate, aspirins, reflux. Nothing beyond that, today.

Q If you need any breaks, you can --

Okay. Thank you.

Q -- let Judge Engoron know.

Can you please describe, for me, your educational background?

I graduated with a B from Queens College in 1979.

Q Okay. nd do you hold any professional licenses?

I'm a New York State CP .

Q nd are you currently employed?

No. I'm retired. I do a few hours of consulting, but I'm retired.

Q What was your last job, before you retired?

I was a partner at Mazars US .

Q nd what is Mazars US ?

It's an accounting and -- an accounting and consulting firm.

Q t the time of your retirement, how long had you been working for Mazars?

With predecessor firms, approximately 41 years.

Q Okay. nd at what point did you become a partner in the firm?

bout 22 years ago.

Q nd what work did you perform as a partner at Mazars?

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I considered myself a generalist. I did a little bit of everything. Some test work, some tax work, sales tax. I came from a background of a multi-functional.

Q nd when you say test work, what is that referring to?

Test work means generally, today, audit review or compilation work.

Q Okay. nd we'll get to those, in a minute. Was the defendant, Donald J. Trump, a client of yours at Mazars?

Yes. He was a client of Mazars.

Q nd what work did you do for him, as an individual?

s an individual, I worked on his tax return. I worked on some certain tax exams, and I worked on the compilation of his Statement of Financial Condition for a number of years.

Q What is a tax exam?

Some government authority, federal, state or city, or an agency thereof, is auditing him to see if the numbers are correct.

Q Okay. nd are you familiar with an entity doing business as the Trump Organization?

Well, the Trump Organization, in my time, were two different entities. There were two entities. The first entity was Trump Organization, Inc. The second entity was Trump Organization, LLC. In my point of view, those were basically inactive entities. The name of the Trump Organization, to me,

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is like a d/b/a. It's an umbrella entity that reflected all of the entities owned or controlled by Donald J. Trump, or his children. That's how I would think of it, today.

Q nd did you do any accounting work for corporate entities owned or controlled by Donald Trump and his children?

I did accounting work for those entities, corporate, partnerships, LLCs. Not just corporate.

Q nd what work did you perform for them?

Like I said, whole spectrum of work, from some audits, reviews, compilations, test work. Some tax returns. You know, a little bit of everything. Whatever needed to be. I was a generalist. I could help out, from time to time.

Q Do you have a sense of approximately how much of your time, let's say during the years 2011 through --

MR. W LL CE: Strike that question.

Q Do you have a sense of how much of your time, from the period of 2011 until your retirement, you were spending on engagements for Donald Trump and the Trump Organization?

I don't have a good sense. If I had to guesstimate today -- it changed over the years -- I would say approximately, anywhere between 45 or 55 percent. But that's just a guesstimate. I don't have the information in front of me, today.

Q Do you have a sense of how much of your time?

Let me take that -- that's probably my billable time.

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That doesn't include -- I don't have an analysis of non-billable time, so I don't know if that -- I don't think we should rely on those numbers today.

Q Okay. So, I understand you may have been doing work that isn't counted in the billable time?

Yes.

Q You are describing -- that's what your concern was?

Yes.

Q Understood.

Do you have a sense of what percentage of your time doing work for the Trump Organization was spent on the compilation of Mr. Trump's Statement of Financial Condition?

Say that again, please?

Q Do you have a sense of how much of your time, how much of the work you are performing for the Trump Organization and Mr. Trump, what percentage was the work on the Statement of Financial Condition?

I would say somewhere in the range 2 to 4 percent.

Q nd do you have a rough sense of how many hours that would be, in a given year?

It changed, over time, depending on who was helping me, not helping me or -- you know, but I would say 50 to 60 hours of my time wouldn't be unusual, in a year.

Q You were describing -- you mentioned that you did work for entities owned or controlled by Donald Trump and his

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children. You said you do an array of work. Could you describe for me what individuals you would work with, in the course of your engagement for the Trump Organization and Mr. Trump?

MR. KISE: Objection, your Honor. I've let this go a bit, but can we maybe confine this to year-by-year, or series of years? nd are we asking for the entire ten-year period? I'm just -- there's no context, here, for this. I mean, in general terms, he can testify, but the questions need to be more precise. It couldn't be the same people, each year.

THE COURT: Well, what if we did this: If you are asking to average, generalize, just make it clear that that's what you are doing, but I'm not going to insist that he go year-by-year.

Q So Mr. Bender, generally, during the period of 2011 to the time of your retirement, who were some of the individuals you would deal with at the Trump Organization?

I dealt with a large array of the executives, legal department, accounting department, and a lot of other people in between.

Q nd who would you interact with the most?

If I had to say who I interacted the most, it would be Jeff McConney.

Q nd what was Mr. McConney's role?

He was some type of -- I don't remember what type of

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vice president he was, but he had a title, and he was Controller for a number of those years. Before that, he was ssistant Controller.

Q You mentioned that you were familiar with the entities of the Trump Organization, Inc. and the Trump Organization, LLC. I would like to ask if you are familiar with a few other entities. re you familiar with an entity called DJT Holdings, LLC?

Yes, I am.

Q nd what do you understand that entity does?

That was a holding entity for a number of Mr. Trump's investments, in the later years.

Q nd did you do any accounting work for that entity?

Mazars did accounting work, yes.

Q nd what accounting work did Mazars do?

We prepared the tax return, and we did certain accounting work papers.

Q re you familiar with an entity called DJT Holdings Managing Member?

I believe the name is DJT Holdings Managing Member, LLC, but you will have to confirm that for me. It's been a while. But yes, I am.

Q nd what does that entity to?

It also held a number of Mr. Trump's investments.

Q nd did that entity -- did Mazars do accounting work

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for that entity?

Yes, we did.

Q What accounting work did you do for that entity?

We did the same kind of work. We filed tax returns and did certain accounting work papers.

Q re you familiar with an entity called Trump Endeavor 12, LLC?

Yes, I am.

Q What does that entity do?

That is the property that owns the Doral, in Florida. The Doral Golf Club.

Q Did Mazars do accounting work for that entity?

Yes. Yes, we did.

Q nd what accounting work did Mazars do for that entity?

To the best of my recollection today, I believe we did compilations and we did tax returns, but I would have to check that.

Q re you familiar with an entity called 401 North Wabash Venture, LLC?

Yes, I am.

Q nd what does that entity do?

That is the sponsor for Trump International Hotel and Tower in Chicago.

Q nd did Mazars do accounting work for that entity?

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Yes, we did.

Q nd what accounting work did Mazars do for that entity?

We did various levels of test work, depending on what year it was, and for certain years we did tax returns and we did accounting, and we did -- let me take that back. 401 North Wabash. 401 North Wabash doesn't file a tax return. To the best of my recollection, we did accounting work papers to assist for the preparation of other entities' tax returns.

Q re you familiar with an entity called Trump Old Post Office, LLC?

Yes, I did.

Q What did that entity do?

That is the entity that operates the Old Post Office Hotel in Washington, D.C.

Q Did Mazars do accounting work for that entity?

We did test work and we did tax returns, to the best of my recollection.

Q re you familiar with the entity called 40 Wall Street, LLC?

40 Wall Street. Yes.

Q nd what did that entity do?

That is the property that -- that's the company that operated the Trump building at 40 Wall Street, in Manhattan.

Q nd did Mazars do accounting work for that entity?

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We did various levels of test work, depending on what year it was, and we did a tax return, amongst other things.

Q nd are you familiar with an entity called Seven Springs, LLC?

Yes, I am.

Q nd what does that entity do?

That entity, to the best of my recollection, changed over the years. I think originally, if I recall, it was supposed to be a golf course, potentially. Later, it was -- became a development project, and in later years it was a personal asset for Mr. Trump.

Q nd did Mazars do accounting work for Seven Springs, LLC?

Yes, we did.

Q What accounting work did Mazars do for Seven Springs, LLC?

To the best of my recollection today, we did tax return -- tax returns and accounting work papers.

Q Okay. I would like to go back and focus on the Statement of Financial Condition you mentioned. Can you describe for me what that document is?

Simplistically, I would say that is what people today would basically call a balance sheet. It's a balance sheet of Mr. Trump's assets and liabilities as of June 30th of the individual year we are talking about, prepared, you know, under

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

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level, during that time 2011 to 2020, what the process was for getting the statement compiled.
Well, it changed as technology changed, so I don't know what year exactly technology changed, but in the early years I would go to Trump Tower, some years, and I would sit with Jeff McConney, and he will give me paper backup for the information. He would give it to me in paper. Sometimes he might give it to -- I think they used DHL or FedEx. It would sometimes come by messenger. I would literally sit with him, and he would give me the numbers. He would give me the backup, or what was available as of that day. I would literally punch holes in the paper, and put it into a looseleaf binder.
s technology changed, they started emailing me more and more stuff, and at some point, for the last few years, I believe they went into a portal.
Q Okay. So let's focus on the years when you were getting the information by email. What would you do after you received the information from Mr. McConney?
Me or a member of my team would insert it into what we call an engagement binder, whether it be an electronic binder, and we would put the information in that binder, and we would leave it in that binder until we were ready to start the engagement. So, if certain information came in and was superseded, we just used -- we would take the one that -- the latest one that came in, at the time we started, physically

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started the work.
Q So you would not always immediately begin the work on the compilation when you received the information from Mr. McConney?
Not necessarily. That's true.
Q Okay. nd so, if information came in that superseded what you had already received, you would only look at the most recent information?
In most cases, I would say that's fair.
(Continued on the next page.)

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

Q Were you doing any other analysis of the supporting information?

I would look at it at high level. If I saw something that bothered me or something that didn't make sense to me, I'd ask him about it, generally.

Q Okay. So, you checked the schedules. You said they would send you a marked-up version of the statement-- of what is necessary to complete the statement?

You know, if -- first of all, we'd have to get an engagement letter. We'd have to get an engagement letter from the client, outline the terms of the engagement. We would, you know, after we would type the statement, sometimes we'd type it in before. We would just type the first draft. fter Trump Organization had finalized their numbers and sent to us, you know, we'd send them a final draft. Typically, we'd send them multiple final drafts with red lines sometimes with changes. Red lines, black lines, whatever they call it. I'm not a lawyer. t the point when everybody was-- the Trump Organization was happy with the statement, the compilation, they would send a representation letter.

fter they signed the representation letter and when the representation letter was signed, Mazars had done all the procedures, all that was required on our end, we would issue the compilation report.

Q Did that process generally remain the same throughout the period of 2011 through your retirement?

To the point we stopped -- not to my retirement. When we stopped compiling the financial statement.

Q That was in 2021;

'20 or '21. I don't remember. You have to tell me.

Q You said it was the statement as of June 30, 2021?

That's what I thought it was.

Q Mr. Bender, you have been handed a document premarked PX-200785. We'll also call it up on the screen here. Do you recognize this document?

MR. KISE: Your Honor, this would be one of those documents that we're going to object to on the Statute of Limitations. We don't think it should come in. It's 2011.

THE COURT: I agree with you we're trying to do this altogether. Hold on. Mr. Kise, I'm going to overrule you on what I think is going to be a continuing objection, and, I'll recognize the continuing objection. s the ttorney General said earlier, and was in their papers, Statute of Limitations claims are not evidence. These can be relevant to just setting the stage for what happened later. It can be relevant for the equitable relief requested. I'm letting in it in but you can make a statement now.

MR. KISE: We just lodge our objection to the document, and, we're going to do that document by document.

THE COURT: Okay. You can make it quick for the other one?

MR. KISE: Yes.

THE COURT: It's admissible.

MR. W LL CE: We offer Plaintiff's Exhibit 75 in evidence, your Honor.

THE COURT: It's in evidence.

(Whereupon, said exhibit was received in evidence as Plaintiff's Exhibit 75.)

Q Mr. Bender, do you recognize this document?

Yes, I do.

Q What is it?

It's the engagement letter that compiled the Statement of Financial Condition to Donald J. Trump as of June 30, 2011.

Q Okay. If I could direct your attention to the top of the page here. It's addressed to lan Weisselberg Executive Vice President, Chief Financial Officer of the Trump Organization.

Why is this letter being addressed to Mr. Weisselberg?

Mr. Weisselberg signed all the engagement letters.

He was the one who ran the accounting department as Chief Financial Officer for the Trump Organization.

Q So, the Trump Organization and their accounting department were responsible for the engagements of you for Donald Trump's personal Statement of Financial Condition?

Yes. Yes, that is fair to say.

Q If I can direct your attention to the second and third paragraphs of this letter. I'll just highlight this for you.

Let's take a look at paragraphs two and three. "We will perform the following services. We will compile, from information you provide, the Statement of Financial Condition of Donald J. Trump as of June 30, 2011."

I think you touched on it when we were talking about high level. What does it mean that you would compile the Statements of Financial Condition?

Compilation is to present, simplistically, to present, in the form of financial statement, the presented compiled information in the form of financial statement given to us by the client. Mazars would do compilation. Mazars would give no assurance on the work and we'd do no testing or analytical review as part of the compilation procedure.

Q Your responsibility was for the form of the document?

If I saw something that stuck out at me at high level, I noticed something on that, I would go back to them

and ask them a question but I did not order or review procedure.

Q Could you just describe for me when you say "audit or review procedure?"

Review procedure would include analytical procedure, analytical procedure and the accountant would give limited assurance. On order, we'd do analytical procedure and audit testing and give the assurance that the financial statement, simplistically -- I don't have the exact in front of me. The financial statement would be reasonably stated. Sorry.

Q In the context of the audit you're describing, what kind of analytical procedures were involved?

nalytical procedure or review would be, you know, comparison from one year to another to determine what kind of procedure, what kind of items you would test.

Q Going back to compilation engagement, are you undertaking any steps to make sure the information you're looking at is true?

No, I would just look at something. If something stuck at high level or came to my attention, I would bring it to the attention of the client.

Q Okay. Going back to the third sentence here, you write: "We will compile from information you provide." Speak clear. Who's the you that will provide information?

The Trump Organization.

Q Who selected the as-of date of June 30, 2011?

When I came around, it was already June 30th. I think, historically, for a number of years, it was June 30th.

Q If we could direct your attention to the top of the next paragraph. It states: "We will compile the financial statements and issue an accountant's report thereon in accordance with statements on Standard For ccounting and Review Services issued by the merican Institute of Certified Public ccountants."

Can you tell me what is an accountant's report?

In this case, they're talking about the compilation report.

Q So, that is something Mazars would be drafting?

It's a standard. It's, I think it's ICP promulgated and we would make certain changes, you know, if we had to, but it's historical.

Q What's the purpose of the accountant's report?

To inform the reader that there is a compilation or any exceptions to whatever standard of accounting the user, the financial statement being prepared under.

Q Can you tell me, what are the statements on standards for accounting review services issued by the merican Institute of Certified Public ccountants?

SS RS is the standard used promulgated to define what rules would have been for a compilation or review.

Q Do you have an understanding of what the rules were provided for related to this letter in 2011?

Yes, I do.

Q What would those rules have provided for?

s I said, no analytical procedures, no testing and the numbers in the financial statement on the representation of management, simplistically.

Q Second sentence in this paragraph states: "The objective of a compilation is to present, in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the financial statements." I think we've covered some of this, so I don't want to go through all of it, but, what does it mean it's the representation of management?

s I just stated, your last question, the numbers are the representation of management of the client.

Q If we go down to the next paragraph, it states: "Compilation differs significantly from a review or an audit of financial statements."

I want to understand, this is, essentially, consistent with what you were telling me before about the difference between review, audit, and compilation?

Yes, sir.

Q The next sentence states: " compilation does not contemplate performing inquiry, analytical procedure, or other

procedure performed in a review."

Is that, in fact, the nature of the engagement that Mazars had with the Trump Organization in 2011 regarding --

I want to make sure to clarify that it is a compilation that did not contemplate inquiry, analytical reviews, or other procedure.

Q Next sentence states: " dditionally, a compilation does not contemplate obtaining an understanding of the entity's internal control, assessing fraud risk, tests of accounting records by obtaining sufficient appropriate audit evidence through inspection, observation, confirmation, the examination of source documents, for example, cancelled checks or bank images or other procedures ordinarily performed in an audit."

So, it's a long sentence. Let's take it bit by bit. Looking at the first part of the sentence, what does it mean "a compilation does not contemplate obtaining an understanding of the entity's internal controls?"

That Mazars would not -- Mazars would not, during compilation, would not obtain an understanding of the entity's internal control.

Q What internal control is at issue here?

Example of internal control is who, the person who signs the checks person, who signs the checks wouldn't do the

bank reconciliations. You know, it would be some separation of duties.

Q With respect to this engagement, internal controls that are being described here relate to how the Statement of Financial Condition was prepared?

No.

Q What would they relate to?

If you do an audit.

Q So, this is saying this is something you're just not doing?

Yes.

Q My question is do you have a sense of what internal controls would be relevant for the preparation of Statement of Financial Condition within the Trump Organization?

Yes, I would wouldn't need to consider internal controls for an audit.

Q Do you recall if, at any point, you actually did obtain an understanding of Trump Organization's internal controls regarding the Statements of Financial Condition?

No, I did not.

Q In some of your other work, did you look at internal controls the company had in other areas?

We did some, what we call, walk-throughs, maybe. Yes. We took one transaction and followed it through to understand what was being done.

Q Can you just give me an example of what one of those walk-throughs might have been?

When an invoice comes in, the person -- somebody would approve the invoice that they would look and then another person would write the check and then somebody would sign off and review that the check was all ready to be done from start to finish to make sure there was some kind of control involved.

Q It mentions that in that compilation does not contemplate assessing fraud risk. Did you ever, in fact, assess fraud risk at the Trump Organization in connection with the Statements of Financial Condition?

No, we did not.

Q Did you assess fraud risk for the Trump Organization in other contexts in audit engagements?

Yes, we did.

Q What would it entail to assess fraud risk in those instances?

We'd have -- just an example, we'd have, what do you call -- we would have meetings at the beginning of the audit. Brain storming sessions. Sorry. It's been a while.

We'd have brainstorming sessions, for example, and we'd discuss potential fraud risks as part of the audit engagement.

Q What were fraud risks for some of the entities you

were doing this work for?

I don't have that. That potentially the CFO or somebody could override the controls and that would be an example of fraud risk.

Q Sentence also mentions "a compilation does not contemplate a test of accounting records," and goes on. What is a test of accounting records?

n example of an accounting record would be a voucher bill to see that the bill on-- the amount on the bill agreed to the amount in the general ledger and whatever. We'd look at the bill.

Q Did you ever, in fact, test accounting records in connection with the preparation of Statements of Financial Condition?

No. No, I do not believe so.

Q The top sentence here states: "Our accountant's compilation report is expected to include references to the following departures from Generally ccepted ccounting Principals. First, what are Generally ccepted ccounting Principles?

We call that G P. We use G P as we go forward. Those are the rules promulgated on how to prepare standards that are required to prepare financial statements under those rules.

Q re there particular rules -- are there particular

rules that apply to the preparation of Statements of Financial Condition for Donald J. Trump?

They would be under the normal capital rules.

Q re you familiar with those rules?

Some of them. I don't know anymore.

Q Do you know which rules govern preservation of financial statements?

gain, Generally ccepted ccounting Principles.

Q I'm asking if there is a particular rule, by number or section, if you're aware, that covers the preparation of personal financial statement?

Not right now, I don't know.

Q If there was a time in 2011 you had a question about what rules governed the preparation of financial statement, how would you find that out?

I was kind of lucky. My managing partner in my office, he wrote-- he was a big contributor for SS RS, one, and, two, he was strong on G P. His office was directly next to me or one office away, depending on where our location was. I also had a quality control person with me who would be an independent quality control person who would review the work to make sure it met certain standards.

You know, we would, you know, speak to other partners if I had a question or I could speak to the director of quality control, whatever her department was called. The

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name changed over the years.
Q Were you or Mazars responsible for making sure the statements complied with G P?
No, that was the Trump Organization's responsibility.
Q It says here the report is expected to include references to following departures from G P. What is a departure from G P?
Sometimes people want to not follow G P and we'd have to disclose it in the financial segment -- in the compilation report.
Q When you say "we"?
I'm sorry. We means Mazars, predecessor.
Q If there's a departure from the G P rules, it needs to be disclosed. Do I understand that correctly?
That's correct.
Q Do you know who decided that Mr. Trump would include these departures from G P in his Statements of Financial Condition?
Those are determined by the Trump Organization.
Q During the period -- we can cover this broadly but during the period of 2011 to 2020, do you recall any instances -- I'll restart the question.
During the period of 2011 to 2020, do you recall any instances where you recommended to the Trump Organization

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that you needed to add a G P departure to Donald J. Trump's Statements of Financial Condition?
I'm not sure of the year. I believe it was this period there was a G P exception pertaining to combining cash and not cash and Marketable Securities. That was the G P exception that was put in. There was a G P exception. They were excluding certain assets, either in Vegas or Chicago, and those were, what do you call it -- I think may have --have been during this period and that was the G P exception when Trump Organization decided to exclude those assets.
Q Okay. So, let's take those each in order. The first one you mentioned was G P exception for cash and Marketable Securities. I understand your recollection is you had to inform the Trump Organization that that practice needed to be identified as a G P exception?
Yes.
Q But you don't remember what year?
No.
Q The other exception you mentioned was Vegas and Chicago properties -- well --
Vegas and/or. I think it changed over the years.
Q So, one of those properties was not being included in the Statements of Financial Condition and that was the G P exception that needed to be disclosed?

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Yes.
Q You informed the Trump Organization that they needed to add that G P exception?
We had a discussion. I informed them. There was discussion there were additional G P exceptions that had to be added to the ccountant's Compilation Report.
Q Do you remember who you had that discussion with?
Not particularly. Either Jeff and/or llen Weisselberg.
Q Jeff McConney and llen Weisselberg?
Yes. Sorry.
Q For the Vegas and Chicago properties, you don't remember what year this would have occurred?
No, I don't.
Q During the period of 2011 to 2020, do you recall any instances where you recommended to the Trump Organization that they needed to remove the G P departure from the Donald J. Trump Statement of Financial Condition?
Not today. No, I don't remember anything.
Q Why don't we walk through each of these departures. .1 states: "Generally ccepted ccounting Principles require that in order to reflect amount to be received in the future at estimated current values, the rights must be nonforfeitable, fixed, and determinable and not require any future services. Several of the values that will be expressed

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will be based on future interests that, in some instances, are not for fixed or determinable amounts and, in some instances, are based on performance of future services."
Who made the determination to include this G P exception in the Statements of Financial Condition?
It was the Trump Organization.
Q .2-- actually let me back up. On the first G P exception, did anyone from the Trump Organization tell you why they decided not to follow G P on this issue?
Not that I recall.
Q Did you perform any accounting procedure to determine if this G P exception was accurate?
No.
Q Let's move on top .2 which states: "Generally ccepted ccounting Principles require that with respect to each closely held business entity summarized information about assets, liabilities, and results of operations for the most current year must be disclosed in the financial statements. In addition, the current estimated value of each closely held business should be recorded as a net investment assets of liabilities. Lastly, the ownership percentages of each closely held business should be disclosed. The Statements of Financial Condition will not include the required summarized disclosures and will report some closely held business entities in a manner that separately states gross assets and

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liabilities and states certain cash positions separately from their related operating entity and will not disclose Mr. Trump's ownership percentage in certain closely held businesses."

Who made the determination to include this G P departure?

The Trump Organization.

Q Did anyone from the Trump Organization tell you why they decided to not follow G P on this issue?

Not that I recall, no.

Q Did you perform any accounting procedures to determine if this G P was accurate?

Not that I recall, no.

MR. KISE: Your Honor, just, I'm assuming that these questions are all confined to 2011, not generally. He just hasn't asked that.

MR. W LL CE: Yes, we're looking at 2011 statement.

Q Let's move on to point numb three. "Generally ccepted ccounting Principles require the receipt of noninterest-bearing deposits in exchange for rights and privileges of the recorded present value of liability. The present value of the liability for noninterest-bearing deposits received as a condition of membership in club facilities will not be included in the accompanying Statement

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of Financial Condition."

Who made the determination not to follow G P on this departure?

The Trump Organization.

Q Did anyone from the Trump Organization tell you why they decided not to follow G P on this issue?

Not that I recall today.

(Continued on following page..)

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Q Did you perform any accounting procedures to determine if this G. . .P. exception was accurate?

No, I did not.

Q Let's take a look at item number four.

"Generally ccepting ccounting Principles require that personal financial statements include a provision of current income taxes, as well as estimated income taxes on the differences between estimated current values of assets and estimated current amounts of liabilities and their tax basis. The Statement of Financial Condition will not include such provisions."

Who made the determination to include this G. . .P. departure?

The Trump Organization.

Q nd did anybody from the Trump Organization tell you why they decided not to follow G. . .P. on this issue?

No, sir.

Q Did you perform any accounting procedures to determine if this G. . .P. exception was accurate?

No, I did not.

Q Last one.

"Generally ccepted ccounting Principles require that personal financial statements include all assets and liabilities of the individual whose financial statements are presented. The accompanying Statement of Financial Condition does not include

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the following for Trump International Hotel and Tower Chicago, and Trump International Hotel and Tower Las Vegas:

"One. Real property-related assets.

"Two. Mortgages and loans payable.

Three. Guarantees which Donald J. Trump may have provided."

Is this the exception that we were talking about earlier, that you recall having?

Yes.

Q So, who was responsible for including this G. . .P. exception?

The Trump Organization.

Q Did you ever discuss, with the Trump Organization, why they didn't want to include Chicago and Las Vegas on the Statement of Financial Condition?

That would be subject to a Kovel letter.

Q Just, so I understand, you were retained by tax counsel for Mr. Trump, and that's how you learned about issues relating to Chicago and Las Vegas?

Yes.

Q So, you were providing consulting services to an attorney. The attorney was representing Mr. Trump; is that correct?

Yes.

Q We are fine not going any further on that, then.

If we look at the bottom part of the page, the last sentence states:

"The effects of the above departures from Generally ccepted ccounting Principles, as described above, will not be determined or disclosed in our accountant's compilation report."

What is meant by, The effects of the above departures?

Simplistically, how these departures might affect the financial statement that -- you know, the numbers on the financial statement, or the footnotes.

Q So, if I'm understanding correctly, if G. . .P. had been followed in these instances, you are not going to calculate what the differences would be?

Simplistically, yes.

Q I'm very simplistic, so I'm happy to see it that way.

So am I.

Q Why were the effects not determined or disclosed?

It was never discussed, but it would have been a tremendous job to figure it out.

Q nd whose determination was it, not to determine or disclose the amount of those departures.

Trump Organization.

Q Okay.

MR. W LL CE: If we could turn to the next page.

Q The top of the page it states:

"Further, our report will include the following:

"Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the Statement of Financial Condition, users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised Statement of Financial Condition, without the above-referenced exceptions to generally accepted principles."

First, what is meant by, significance and pervasiveness?

To me, simplistically, it would have a big number, or have an effect on what the reader would perceive, by reading the financial statement.

Q So the difference between following G. . .P. and not following G. . .P. on the above essentials could be significant and pervasive?

Yes, sir.

Q nd when he says, The matters discussed above, that's referring to the G. . .P. exceptions we were just walking through; is that correct?

That is correct.

Q I just want to make sure I understand. This is only referring to the size and pervasiveness of the G. . .P. exceptions that were actually disclosed in the paragraphs above; is that correct?

Discussed above. Yes.

Q Why don't we turn to paragraph four on this page.

The top of this paragraph states:

"Our engagement cannot be relied upon to disclose errors, fraud, or illegal acts that may exist. However, we will inform the appropriate level of management of any material errors, and of any evidence or information that comes to our attention during the performance of our compilation procedures, that fraud may have occurred. In addition, we'll report to you any evidence or information that comes to our attention during the performance of our compilation procedures regarding illegal acts that may have occurred, unless they were clearly inconsequential. We have no responsibility to identify any communication deficiencies in your internal control, as part of this engagement."

What does it mean that your engagement cannot be relied upon to disclose errors, fraud, or illegal acts that may exist?

s we discussed earlier, since it's a compilation, Mazars did not do, for example, any internal control work. The financial statement is a representation of management, and Mazars is giving no assurance on the financial statements.

Q When you said you relied on the representation of management, who was management?

That would be Donald J. Trump or his trustees, lan

Weisselberg, or whoever was -- whoever was determined to be the agent of either Trump -- Mr. Trump, or his trust.

Q Okay. Let me address Mr. Kise's point, from before. In the year 2011, who would be the management relied upon?

Mr. Trump, and his representatives.

Q The next sentence states that, "We'll inform the appropriate level of management of any material errors."

Do you see that section?

Yes.

Q Do you have an understanding of who the appropriate level of management was, in 2011?

It would have been Mr. Trump and Mr. Weisselberg. We would have communicated with, presumably, Mr. Weisselberg or Mr. McConney, if we found an error.

Q Do you ever remember bringing an error to Mr. Trump's attention?

No, I do not.

Q Do you remember bringing any errors to Mr. Weisselberg's attention?

Mr. Weisselberg or Mr. McConney. I can't tell you who was on the individual items. Mr. Weisselberg or Mr. McConney did, from time to time, find errors, and we would go over things.

Q So, not necessarily 2011, but you remember, from time to time, you would bring errors to Mr. Weisselberg's and

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

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

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

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

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

Q For this engagement, do you know, in 2011, do you know who the individual was who was designated to supervise the services you provided?
lan Weisselberg, with the assistance of Jeff McConney.
Q nd are you familiar with their relevant skill, knowledge and experience?
Yes.
Q nd could you describe for me, generally, the level of their skill, knowledge and experience?
lan --
MR. KISE: Objection. Is the witness going to provide his understanding? Is he opining as an expert on the level of knowledge and experience?
THE COURT: Well, he is not qualified as an expert. He is a fact witness; right?
MR. W LL CE: Correct. I'm asking what his understanding was of the -- of the skill, knowledge and expertise that Mr. Weisselberg and Mr. McConney had, when they were receiving his service.
MR. KISE: I don't think there's any proper foundation laid for that. I don't see how he can ask this witness that question, other than his general guessing as to what their qualifications were. There hasn't been any testimony that he is familiar with those individuals, to

the extent he knows their educational background, knowledge or training.
MR. W LL CE: I will ask him some foundational questions.
Q So, let me back up. The suitable skill, knowledge and experience refers to the process of valuing properties. Is that correct?
mongst other things.
Q nd are you familiar with the skill, knowledge or experience of, let's start with Mr. McConney, in valuing real estate?
No, I'm not.
Q What about Mr. Weisselberg?
No, I'm not.
Q So you don't have any familiarity with their skill, knowledge or experience.
Did you ever make a determination as to whether or not they had suitable skill, knowledge or experience?
MR. KISE: Objection.
MR. W LL CE: I'm asking if he made a determination.
MR. KISE: How can he make a determination if he has no understanding?
MR. W LL CE: Then the answer can be no.
THE COURT: Overruled. Whether it was right or

wrong, proper-improper determination, if he made a determination, he made a determination.
Q nd the question is, did you make a determination?
I made a determination they had the suitable skill, experience to oversee the services that we were providing.
Q Understood.
MR. W LL CE: If we turn to the next page of this engagement letter.
Sorry. If we can go to the bottom. Next page.
Q Do you recognize -- well, first let me ask you, underneath WeiserMazars, did you sign this agreement?
WeiserMazars.
Q WeiserMazars?
But some people use the French interpretation.
You are asking who signed?
Q Who signed that?
That's either my signature, or an electronic signature of mine, which I would have given permission to use. But it's probably a real signature.
Q On behalf of the firm?
Yes.
Q nd do you recognize the signature underneath that one?
That's lan Weisselberg.
Q Okay. nd did you have an understanding of whether or

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not Mr. Weisselberg had the authority to retain Mazars for this engagement, based on his position as CFO of the Trump Organization?

Yes, I did.

Q nd what was the basis for that understanding?

He was -- he signed all the engagement letters for the Trump Organization, for the entities that -- let me take that back. He signed all the engagement letters for the entities that were run out of 725 Fifth venue. I'm not sure he ran all the entities. nd he was the go-to guy for all accounting matters for the Trump Organization.

Q Mr. Bender, do you recognize -- I've handed you a document that's been marked Plaintiff's Exhibit 1893 --

MR. W LL CE: Strike that.

Q Mr. Bender, I've handed you a document that has been marked Plaintiff's Exhibit 1873 for identification. Do you recognize this document?

Yes, I do.

Q nd what is it?

This is a -- this is an email from Jeff McConney to me -- Doc is me. That's a nickname. That's the most asked question in deposition history -- where Jeff is sending us some information. It appears to be in Excel, for the June 30th, 2011 statement of the compilation of the June 30th, 2011 Statement of Financial Conditions for Donald J. Trump.

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MR. W LL CE: I believe the defendants have an objection.

MR. KISE: Thank you, Mr. Wallace.

Yes. Same objection, your Honor. Predates the July 13, 2014.

THE COURT: Okay. Duly noted, and overruled, for the same reasons.

Q Do you want to explain why you're called Doc, on this?

Jeff came from the predecessor firm, Spahr Lacher & Berk, I won't go through all the -- and this was a nickname I had 35, 40 years ago, and it's only legend. I don't remember exactly what it is, and it still sticks around with one or two people, today.

Q So, do you have an understanding of, what are these attachments that he's sending to you, in this email?

These are certain -- this is the schedule. It appears to be the schedule we previously discussed, which was their control schedule, or at least the first version of it, for the Jeff Supporting Data, and certain backup schedules, as shown under the attachment section.

Q Okay. nd so, this would be at the beginning of the process of preparing the Statement of Financial Condition?

ssuming that this is the first one. There could have been a predecessor one. I couldn't answer that, today.

Q You can see, there's a number of exhibits listed under

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attachments, and the first one is Jeff Supporting Data. Can you just describe for me what you understand that exhibit to be?

That's Jeff's control sheet on how he is coming up to the Statement of Financial Condition for Mr. Trump, as of June 30th, 2011, and if that's the control sheet, we would be using those numbers. t the end of the day, the numbers on the Jeff Supporting Data, when all is said and done, have to agree. Should agree. Nothing has to, in life. Should agree, to the assets and liabilities on the Statement of Financial Condition.

Q Okay.

MR. W LL CE: Can we pull up, I believe it's the native one of that attachment to this email. This is still Exhibit 1873. This is the native version, the Excel version of the attachment that we were just looking at. If we can just go up to the top.

Q Do you recognize this document, or this attachment?

This is one, a version of the Jeff Supporting Data for the Statement of Financial Conditions for Mr. Trump, as of June 30, 2011.

MR. KISE: Same objection, your Honor.

THE COURT: Well, it's part of the same exhibit, so --

MR. KISE: Well, that's not exactly clear. I think it is.

THE COURT: You are right. So I'll recognize the

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objection, and overrule it.

MR. KISE: Thank you.

Q So, can you describe for me how this document works?

Jeffrey, line-by-line, prepares -- he is saying that the cash, 207 million -- yes. $207,488,027, Jeff would have a back-up schedule in this case, for that amount. Sometimes he would do the computation, but this is his control, and his backup. In many ways, it would be like a trial balance. This is where Jeff is determining Jeff, or the Trump Organization, whoever is determining it, would -- this would be their control sheet.

Q nd what would you do with this document, when you received it?

Whatever version was the last version we would have received when we started our compilation work at Mazars, that would be our control. So, if Jeffrey -- and we would change. If Jeffrey would send updates afterwards, Jeff, or a member of his team, we would cut and paste that information into a new worksheet, because we do a lot of referencing back and forth, and we didn't want to put what we call tick marks, and I'm sure we'll see that the next few days. We wouldn't want to have to put all these references in 500 times, so we needed to take a version that was our control, and that would be the version when we started, really started to do the work.

Q Okay. So he might send you this, and you might not

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work on it, but it might be the version you would use to control and put together your final work?

The version that we received when we started our compilation procedures, started the real work, not the engagement, but honestly started the work, that was the one we would use, and any updates came in, we would just cut and paste the certain lines, as needed, to make it agree to the Trump Organization's version that they were sending us later.

Q If we go back to the original email, Exhibit 1873 --

MR. KISE: Just for record purposes. Sorry. How are we keeping track? I know that the exhibit has a number on it, but the spreadsheet, do we have some number associated with it? I mean, how are we --

MR. W LL CE: That's incorporated with the exhibit list, I believe is how we prepared it, and there is a native file attachment. So, I think that's what we sent to you guys when we produced our exhibit list. I'm not sure. I'll confess, I don't remember how you guys structured your --

MR. KISE: I just want to make sure we have got some way of keeping track. We will sort that out later.

MR. W LL CE: Sure. I will, when I'm reading in the record, I did read -- this is native 01, so we'll try to make that as clear as possible.

So, I would like to open one of the other

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exhibits. It's escrow balances 0611XLS. I'll say this is going to be Plaintiff's Exhibit 1873, native file 04. This was on the exhibit list, with a file name of September 23, 2011, Restricted Cash Flow and Escrow Balances.

Q Do you recognize this document?

I think you said Restricted Cash Flow. I think it's Restricted Cash.

Q Restricted Cash. You are correct. Thank you for correcting me.

Do you recognize this document?

It appears to be -- it appears to be a schedule Jeff McConney or the Trump Organization would have sent us, with the restricted cash and escrow balances for Donald J. Trump for June 20, 2011.

Q Do you have an understanding of who would have prepared it?

Somebody in the Trump Organization.

(Continued on the next page.)

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Q What would you do with this document once you received it?

I would have to check my work papers but, presumably, we would have footed it, added it up. I don't know if any other backup came with it, and, we'd make sure that the total at the end of the day, if you can't see down here, ties into the Jeff Supporting Data at the end.

Q You're saying you want to make sure?

9,000,180.

Q That comports with the Jeff Supporting Data spreadsheet?

Yes.

Q This e-mail plaintiff's Exhibit 1873, file name is Native 05. Do you recognize this document?

It appears to be the Trump Organization's schedule of cash and short-term investments from Mr. Trump and his entities as of June 30, 2011.

Q Do you have an understanding of who prepared it?

It would have been prepared by Trump Organization.

Q What would you do with this document when you received it?

I can't --

MR. KISE: Same objection. Same objection.

THE COURT: Noted and same ruling.

MR. KISE: I think that applied to the last file

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too. It's moving so quickly. I don't recall it but just for the record.

MR. W LL CE: We're happy to note --

THE COURT: We'll accept the objection retroactively.

MR. W LL CE: We're happy to recognize that the defendant's have a standing objection to documents from before the Statute of Limitations.

Q So, I'm sorry. I don't know if it was asked and answered. What would you do when you received this?

What would we do when we received it?

Q Yes.

First, we would insert it in our binder. I would need to see our work papers, specifically, to see what we did. I presume that we would have footed it or cross-footed it. We'd have to check that and we would have made sure that the total on the bottom agrees to Jeff Supporting Data.

Q So, you mentioned footing and cross-footing. Is that how you're recording your work on Statements of Financial Condition?

I record-- we didn't always do it but sometimes we just check the math. You go down Excel, boom, and make sure it adds.

Q Why don't we see if it's helpful. This is a Native file document, so we just have a slip sheet for the document.

(Handing.)
Q So, the exhibit is Excel spreadsheet bearing production number Mazars NY G 00003154. Do you recognize this document?
It appears to be Mazars' version, final version of the Jeff Supporting Data Statements of Financial Condition to Donald J. Trump as of June 30, 2011.
MR. KISE: Same objection.
THE COURT: Can we simplify this by calling it a standing objection?
MR. KISE: It's the objection on the Statute of Limitations. Perhaps, I should frame it that way. Statute of Limitations objection.
THE COURT: Standing objection to any document before 2014?
MR. KISE: July 13, 2014. Yes, your Honor.
THE COURT: Okay. If I change my ruling on the objections, I'll let you know.
Q So, Mr. Bender, you mentioned this is the final version. How did you determine that?
It appears to be the final version because it has tick marks the blue. Red marks which would be the control version I previously discussed. We would have had the blue numbers cross-references to Mazars' work papers. So, it appears to be our version.

Q Okay. So, let's walk through that. First, I'll walk up to the screen. The first one you mentioned, what are these red indications? I'll describe them for the record as two red arrows in the form of a circle.
What does that indicate?
I'd have to go back and confirm to our software definition of tick marks but I believe it means the math was calculated.
Q To the extent folks can see, up in the C area here. "=round (+ E-11, *E-12, 0.)" What does the combination of red circles of the formula of that cell indicate?
They are saying 535,714 multiplied by .0615 equals 32,946.
Q So, if I'm understanding correctly, the red circles indicate someone from Mazars is confirming the math is being performed correctly on that?
Yes.
Q You also mentioned the blue numbers. I'll describe it for the record. We're here at -- why don't we take a look at this one. I'll note for the record it's in row six, column H. There's a blue number 4100.01. What does that indicate?
I previously mentioned Mazars had a software package which we call-- I think it's called edge game. We call it, E-pace. In E-pace these work papers are inserted. That's our file. It was paper in the olden days. This is done

electronically. The back of the schedule, I can't see what-- the yellow sign is for the number but the 207 million and change is on schedule 4100.01 and if the software works correctly, and I clicked that 4100.01, it will open up that schedule and see the numbers are the same.
Q Okay. So, I'm going to ask if we can pull up the document marked as Plaintiff's Exhibit 2613. This is another Native file document. So, we have handed up a slip sheet.
We're going to put the Excel version up on the screen here and I could ask you, do you recognize this document?
ctually, let me state for the record that on our exhibit list, this document is identified as a document listed as SL &E and it's saved as 4100. Cash balances as of 6/30/11, XLS XLS.
Do you recognize this document?
It appears to be the schedule short-term cash and short-term investments under 50,000 for Mr. Trump and his entities as of June 30, 2011.
Q There's an earlier tab 6/30/11. What is that tab document?
This is the schedule prepared by the Trump Organization of cash and short-term investments for Mr. Trump and his entities as of June 30, 2011.
Q What does the notation up on the top in red PBC

indicate?
That's -- it stands for prepared by client. Software you can just click it and it goes on.
Q This is indicating this is information you received from the Trump Organization. It's not something generated by Mazars; is that correct?
Yes.
Q Is this a schedule that would pop up in your system?
Yes.
Q When you click on number 41?
It should.
MR. KISE: Your Honor, Statute of Limitations objection.
THE COURT: I don't think we have to do it for every document.
MR. KISE: I'm going to look again, but, my understanding of the case law is we actually do, unfortunately. That the ppellate Division won't accept a straight line objection. We can come up with a way to streamline this, I assure you.
THE COURT: Okay. Well, we only have a few more months.
Q So, if we could scroll down to the bottom here, row 42. The line reads: "Balances in US dollars at the exchange rate on 6/30/11."

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

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

document look the same way, they'd take you back to another file that would have information that sports the number in the spreadsheet?
I believe that would be true, but, I'd have to look at the whole document to confirm that.
MR. W LL CE: Could we pull up Plaintiff's Exhibit 787?
Q I put a copy image up on the screen, Mr. Bender. Do you recognize this document?
THE COURT: Objection duly noted.
MR. KISE: Thank you.
Yes, I do.
Q What is this document?
This is the Statement of Financial Condition for Mr. Trump as of June 30, 2011.
Q Is this the final version?
Yes, it is.
Q How can you tell?
It has my electronic signature on the second page of the ccountant's Compilation Report.
Q If we can turn to that page, the second page, Bates number 3133. This is the electronic signature you're talking about?
Could be by manual or electronic. I don't know.
Q So, what should the relationship be between this

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

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schedule. We make sure they cross-reference but we would have typed final statements.
Q Okay. So, if we could go back to the statement which I believe is Exhibit 787, I want to walk through the various segments of the report. I believe this is the first page. So, this page stating "Donald J. Trump Statement of Financial Condition June 30, 2011."
What is this section of the Statements of Financial Condition?
This page?
Q Yes.
This page is the asset page.
Q Okay. What is reflected -- so, who is responsible for the numbers on this page?
The Trump Organization.
Q I should have gone back a couple of pages. Can we go back. So, if we go to the top, actually. Independent ccountant's Compilation Report. What is this section of the Statements of Financial Condition?
s we talked about earlier this afternoon, this is the ccountant's Compilation Report. This is basically a ICP promulgated form. We make some changes. In this case, the G P exceptions, for example, and this explains that, you know, our procedures are only compilation procedures. They're not order review procedures, and we did not do review

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or audit testing or analytics, as we went through this afternoon.
Q So, why is this addressed to Donald J. Trump?
Because the engagement-- it's assets of Donald J. Trump and, in this case, the engagement letter was and the -- the engagement letter is addressed to Donald J. Trump.
Q The first paragraph states --
I take that back. It's not true. The engagement letter does not address Donald J. Trump but the engagement letter says we were engaged to prepare the financial letter statement for Donald J. Trump.
Q The engagement letter was to the Trump Organization signed by llen Weisselberg to prepare, compile the Statements of Financial Condition for Donald J. Trump?
Yes. I apologize for the error.
Q First paragraph states: "We have compiled the accompanying Statements of Financial Condition of Donald J. Trump as of June 30, 2011. We have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with accounting principles generally accepted in the United States of merica."
Is this statement accurate?
Yes, it is.

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Q Okay. Did this language have to be included with the Statements of Financial Condition?
This letter had to be included in the Independent ccountant's Compilation Report.
Q Which attaches to the Statements of Financial Condition?
Yes.
Q So, to make sure we're describing the full document here as the Statements of Financial Condition but, technically, that list of values, that's what is his statement and this is an attachment?
That and the accompanying footnotes, notes.
Q Why don't we take -- why don't we take a quick look at those. I think they appear on page six -- no. Four. So, this says: "Notes to Statement of Financial Condition," and in parenthesis, "Independent ccountant's Compilation of Work."
What does it mean? These are the notes to Statement of Financial Condition?
This is, simplistically, these are requirements under G P or other disclosures that are made related to the Statements of Financial Condition.
Q What is the purpose of notes?
To allow the reader to have a full picture of the financial statement, simplistically.

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

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Universe, yes, or a portion of it.
Q This was included as one of the assets in the Statements of Financial Condition?
In 2011, yes, it was.
Q Whose decision was it to include the Miss Universe Pageants as an asset on Statements of Financial Condition?
It was the Trump Organization's but it was required by G P anyway.
Q Mr. Bender, we've handed you a document marked as Plaintiff's Exhibit 786.
Do you recognize this document?
Yes, I do.
Q What is this document?
It's the representation letter for the June 30, 2011, compilation of Donald J. Trump's Statements of Financial Condition.
MR. KISE: We assert a Statute of Limitations objection on this document.
THE COURT: Noted.
Q How did this representation letter fit into the process of compiling a Statement of Financial Condition?
It's something that would have been required for us to issue the Statements of Financial Condition.
Q Why was it required?
Because I felt I wanted it.

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

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bottom of the document? Do you recognize the signature at the bottom?
Yes, I do.
Q Whose signature is that?
llen Weisselberg's.
Q He's signing on behalf of the Trump Organization?
Yes, he is.
Q Can we go back to the paragraph I just read into the record? This is the first paragraph of the letter.
Would Mazars have issued a Statements of Financial Condition if llen Weisselberg did not make this representation on behalf of Mr. Trump?
No, we would not.
Q Would Mazars issue Statements of Financial Condition if they learned this representation was not true?
No, we would not have.
Q We'll look at the next paragraphs. We'll read them to go. It states: "We confirm, to the best of our knowledge and belief, the following: s of October 6, 2011, you have provided us with a copy of the statement that you have compiled. We've read that information. The data presented in the statement was provided to you by members of Mr. Trump's accounting department and you have compiled that information in an appropriate manner when preparing the statement."
What's the significance of this language?

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It's, you know, it's confirming that the Trump Organization has read the statement; and, the information included and the data presented in the statement was provided by the Trump Organization's accounting department.
Q So --
nd you've compiled the information in an appropriate manner. That we prepared it.
Q So, they've read the final statement, and they're signing off on it?
nd that the information was provided by them.
Q Okay. The next paragraph states: "The statement referred to above is fairly presented in conformity with accounting principles generally accepted in the United States of merica. ll assets are presented at their estimated current value and all liabilities are presented at their estimated current amount which have been determined in accordance with the guidelines promulgated by the merican Institute of Certified Public ccountants except to the extent noted in the ccountant's Compilation Report which was annexed to this statement."
Would Mazars have issued a Statements of Financial Condition if lan Weisselberg did not make that representation on behalf of Mr. Trump?
It says "to the statement," not to this statement. No, we would have not.

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Q Would Mazars have issued a Statements of Financial Condition if they learned this representation was not true?
No, we would not have.
Q I'll go on to the next paragraph. It states: "There are no material transactions that have not been properly recorded in the accounting work papers underlying the statement, other than those exceptions from accounting principles generally accepted in the United States of merica that are noted in the ccountant's Compilation Report."
So, first the ccountant's Compilation Report is that section of the Statements of Financial Condition we were looking at before?
That's the first two pages of the ccountant's Compilation Report that bears my signature on the second page.
Q Focusing on the word "material". There are no material transactions that have not been properly recorded. Is that an accounting term of art or what is meant by the term "material"?
In this case, the materiality is not a concept on compilation. Material means important, big. There's no state of art to it.

(Continued on following page..)

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Q There are other contexts in an accounting engagement where materiality has a specific meeting?
In a review or an audit, it would.
Q Would Mazars have issued the Statement of Financial Conditions if lan Weisselberg did not make this representation on behalf of Mr. Trump?
No, it would not have.
Q Would Mazars have issued the Statement of Financial Condition if it learned this representation was not true?
No we would not have.
Q If I could direct you to the next paragraph, it states, "We have no plans or intentions that may materially affect the carrying amounts or classification of assets and liabilities, other than those noted in the accounting work papers underlying the statement."
Would Mazars have issued the Statement of Financial Condition if lan Weisselberg did not make this representation on behalf of Mr. Trump?
No, we would not have.
Q Would Mazars have issued the Statement of Financial Conditions if it learned this representation was not true?
No, we would not have.
MR. W LL CE: If we could turn the last paragraph, here.
Q It states, "There are no material losses, such as from

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purchase or sale commitments that have not been properly accrued or disclosed in the statement."
Would Mazars have issued the Statement of Financial Condition if lan Weisselberg did not make this representation on behalf of Mr. Trump?
No, we would not have.
Q Would Mazars have issued the Statement of Financial Condition if it learned this representation was not true?
No, we would not have.
MR. W LL CE: If we could scroll onto the next page. I'll just -- we can highlight this section?
Q That starts, "There are no," and it talks about violations or possible violations of regulations, other claims, other material liabilities.
Would Mazars have issued the Statement of Financial Condition if lan Weisselberg did not make this representation in these three paragraphs on behalf of Mr. Trump?
No, we would not have.
Q Would Mazars have issued the Statement of Financial Condition if it learned these representations were not true?
No, we would not have.
Q I'll skip ahead, and direct you to -- this is at the top of the page, now. There's a paragraph that states, "Mr. Trump has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets, or has any asset

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been pledged as collateral, other than those noted in the statement."
Would Mazars have issued the Statement of Financial Condition if lan Weisselberg did not make this representation on behalf of Mr. Trump?
No, we would not have.
Q Would Mazars have issued the Statement of Financial Condition if it learned this representation was not true?
No, we would not have.
THE COURT: Let me stop you there, because we only have one more minute.
I think the "or" in that paragraph should be "nor", but I'll let everybody else interpret it.
I just want to talk to both sides for a second. Stay where you are.
Mr. Robert, you are very well versed in the CPLR; correct?
MR. ROBERT: You will know, after I answer your question.
THE COURT: I will. It might be a softball, though. m I correct that somewhere above the first section of rticle Two, it says that judges do not have any discretion to ignore statutes of limitation? That's correct; right?
MR. ROBERT: That is correct, sir.

THE COURT: ll right. So, I just want to say, after all we have gone through this afternoon, that I trust that -- well, that unless the ttorney General can relate all the discussions about 2011 documents to something that happened later, this has all been a waste of time.

MR. KISE: We certainly agree with that, Judge.

MS. H BB : Thank you.

THE COURT: I figured you would.

MR. W LL CE: s you said, it's turned into a love fest, I guess.

Your Honor, I think we saw, in Mr. Kise's opening, that there are credit reports from Deutsche Bank that include these earlier years that happen --

MR. KISE: No, your Honor. These credit reports related to the OPO loan that was closed in ugust of 2014, which postdates the statute of limitations. Those credit reports relate to that specific loan that, unfortunately for us, is within the limitations period. So, that's a very different scenario, then.

MR. W LL CE: I will explain my point, then. There are credit reports that consider things that happen in 2011, during the period that is under the statute of limitations.

MR. KISE: Not for any loans that are within the limitations period, your Honor, but we'll tie that up

later. You told him he needs to tie it up.

THE COURT: I'm sure we'll address this many times, going forward.

nd Mr. Robert, I hereby deem you an expert in the CPLR, and no doubt other aspects of New York law.

MR. ROBERT: Thank you, Judge.

THE COURT: ll right. Give me one second.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Okay. We are going to break for the day. I appreciate everybody's patience and stamina. We resume tomorrow on schedule, 10:00 in the morning. Have a good evening.

MR. W LL CE: Thank you, your Honor.

(Whereupon, the proceedings were adjourned to Tuesday, October 3, 2023 at 10:00 a.m.)

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$1 (1)
64:3
$1.4 (1)
25:24
$1.5 (1)
59:11
$10,000 (2)
25:7;67:2
$10,900 (1)
24:23
$100 (5)
29:18;33:16;50:12;
63:11;78:21
$100,000 (1)
144:2
$120 (1)
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In The Matter Of:

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

October 3, 2023

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: P RT 37

PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

- against - INDEX # 452564-2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY McCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC; ND SEVEN SPRINGS, LLC,,

Defendants.

October 3, 2023
60 Centre Street
New York, New York 10007

B E F O R E: THE HONOR BLE RTHUR S. ENGORON,
Justice of the Supreme Court

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Senior Court Reporters

THE COURT: The man you just heard I have affectionately called Tommy. His next gig is, no doubt, going to be with the Metropolitan Opera Company.

Good morning, everyone. If you were here for yesterday's excitement, welcome back; and if you weren't, you might have heard a little about it.

First, let me apologize, mea culpa, for erroneously stating yesterday that expert opinion testimony is not evidence. It certainly is. I was reacting to what seemed like an attempt to have an expert introduce new facts, of which the expert would not have personal knowledge, which is impermissible. I hope that no harm, no fall applies.

Second, I want to clear up any possible misconceptions that might have arisen over colloquy in the last five minutes of yesterday, and over the repercussions of the June 27th ppellate Division First Department decision and order. This case arrived at the pp. Div., as we call it, with seven causes of action. It left with seven causes of action. It arrived with 16 defendants. It left with 15 defendants. It arrived at the ppellate Division with a six-year statute of limitations. It left with a six-year statute of limitations, extended by both Covid tolling, and a tolling agreement.

The pp. Div. ruled that the continuing wrong

doctrine, which would have pushed the statute of limitations back at least to 2011, did not apply, so that only claims that accrued after June 13, 2014, or February 6, 2016, depending upon application of the tolling agreement, remained viable.

The general rule is that a claim accrues when someone can sue on it. Here, the ttorney General is suing over the use of false financial statements in business, not over the underlying deals themselves. Obviously, she could not have sued on those statements until defendants issued them. Every use of a false financial statement in business starts the statute of limitations running, again, no matter when the transaction out of which is arose, closed.

I understand that the defendants strongly disagree with this, and will appeal, in part, on this ground. Yesterday afternoon's testimony was based on certain agreements between defendants and non-party Mazars that were consummated in 2011, long before they could be sued on, in isolation. Thus, I made clear that unless those agreements were somehow tied to something that occurred years later, at least three years later, or five years later, the afternoon was a waste of time.

Mr. Wallace promised to connect the dots however, as I stated yesterday, statutes of limitation bar claims, not evidence. In any event, on the first day of a

multi-month trial, I am inclined to grant considerable leeway to both sides as to what may be relevant.

Finally I want to emphasize that this trial is not an opportunity to relitigate what I have already decided, including my conclusions in the summary judgment decision. That's why we have appeals.

So, let's continue with the testimony of Donald Bender, a former principle of Mazars, and I will, over defendant's continuing objection, allow testimony about documents, dates and events that occurred in 2011 and beyond, subject to connection to later documents.

Speaking of continuing objections, although I appreciate Mr. Kise's diligence in attempting to preserve the record by continuing to object to the use of documents dated prior to 2014, the Court of ppeals, the highest Court in New York State, has made clear that a continuing objection makes it unnecessary to challenge other evidence, for the same reason. nd that is Kulak, K-U-L- -K, versus Nationwide Mutual Insurance Company, 40 N.Y.2d 140 at page 145, 1976.

Obviously, I would not be commenting like this if a jury was present. It is not, so I've taken the liberty of attempting to clarify where the trial stands at this juncture.

nd, now shall we continue with Mr. Bender?

nd as yesterday -- and most of you know this -- I'm allowing a group of pool photographers and one videographer to come in and show how good looking we all are.

(Photographs taken.)

THE COURT: Oh, the wages of fame.

MR. W LL CE: Your Honor, if I could just raise one procedural issue with the defendants concerning timing? I understand Mr. Bender was served with a trial subpoena when he left the courthouse yesterday, from the defendants, and so I just would want to know for us, in ordering our witnesses, are they planning to cross Mr. Bender, or are they doing taking him as a -- separately, during their case in chief?

MR. KISE: s of now, we are planning to cross Mr. Bender.

MR. W LL CE: Okay.

MR. KISE: One other point of clarification, your Honor. So, I have not yet -- I did receive a letter from the ttorney General early this morning. I have not yet looked at the cases, including the cases that you cite --

Usually no one has a problem hearing me.

-- including the cases that -- the case that you just cited, the Kulak case. I've not looked at them. I will state, again, that our appellate consultants, some of

whom I'm sure the Court would recognize, have told us differently. But, give us the opportunity to look at the case. I take it that your Honor is not precluding me from making the objection. I just don't now how to balance this, because I'm being told that I need to preserve these objections a certain way.

THE COURT: My mother always told me, Do what you're told. So, yes. Feel free, until you have had a chance to digest that case --

MR. KISE: Thank you, Judge.

THE COURT: -- to object to each document.

Okay. re we recalling Mr. Bender?

MR. W LL CE: The People are going to continue to the testimony of Mr. Bender.

(Whereupon, there was a pause in the proceedings.)

THE COURT: This is a big room, and apparently the isolation room is far away.

MR. W LL CE: I believe the words rabbit warren came to mind, as we were making our way through, yesterday.

D O N L D B E N D E R, having been previously sworn, was examined and testified as follows:

THE COURT: I will remind the witness, as I remind every witness, that he is still under oath.

THE WITNESS: Good morning.

THE COURT: Good morning.

Counselor, please proceed.

CONTINUED DIRECT EX MIN TION

BY MR. W LL CE:

Q Good morning, Mr. Bender. re you settled in?

I need two seconds.

Q Okay.

(Whereupon, there was a pause in the proceedings.)

Okay.

Q Mr. Bender, when we closed yesterday, we talked in fairly extensive detail about the process and documents related to the preparation of the 2011 Statement of Financial Condition. Do you recall that testimony?

Yes, I do.

Q nd we talked about, I believe there was an engagement letter, Jeff Supporting Data, a representation letter, and the reported -- the statement itself; is that correct?

Yes. That's correct.

Q Did Mazars also compile a Statement of Financial Condition for Donald J. Trump as of June 30 for each year from 2012 to 2020?

That's correct.

Q Okay. Were there any significant changes in the preparation process for those statements between the 2011 and

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the 2020 statement?
MR. KISE: Objection, your Honor. I don't think that we can summarize. This case involves documents, as they have said, and so we can't just summarize. It's inappropriate to summarize a ten-year span and say the process is the same, everything is the same. Each year stands on its own. It's a very complicated process, and if the government intends to establish intent, materiality and reliance, then it needs, respectfully, to go year-by-year.
MR. W LL CE: What's the evidentiary objection?
MR. KISE: The nature of my objection is, it's calling for a narrative. The question calls for a narrative. It's an open-ended question, and it's introducing facts that are not in evidence. There's no foundation.
MR. W LL CE: Yesterday you said I needed to tie things together. The 2011 process continues. I'm allowed to ask this general question. If I want to go through the additional documents, I will. It's my exam.
MR. KISE: Okay. That's fine. If he's intending to through the additional documents year-by-year, that's fine. I just want to make that clear. If it's an initial summary question, then I'll withdraw my objection.
THE COURT: Was the question whether the -- I think the question was whether the process that he used

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changed, over time.
MR. W LL CE: That's correct, your Honor.
THE COURT: nd has that question been answered?
MR. W LL CE: That question has not been answered.
THE COURT: Objection overruled. Let's hear the answer to that, and then we can discuss whether it's proper to group everything, or to what extent every year has to be examined individually.
I think the process was pretty much the same. The only thing I could think of off the top of may head was that I think the December 2015 return -- return. Financial statement -- the trustees were in place by the time the statement got released in -- no. One year, the trustees took over. That would have been the 2016 statement, probably.
Q So that I'm understanding correctly, the process generally remained the same, but at some point the trustees of the Donald J. Trump Revocable Trust became responsible for the statement?
They were the one that signed the engagement letter and the representation lever.
Q Can I ask, did the obligations of Mazars in compiling this financial statement change in any significant way, from 2011 to 2020?
No, sir.

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Q Okay. Did the responsibility of the Trump Organization regarding the preparation of the financial statement change in any significant way, between 2011 and 2020?
No, sir.
Q Do you know if, for each statement from 2011 to 2020, Mazars required a signed engagement letter from the Trump Organization?
It was signed. I'm not sure if it was signed by Trump Organization, or the trustees, after Mr. Trump became president.
Q But in each year from 2011 to 2020, you required an engagement letter?
Yes. Mr. Weisselberg would have signed, either way.
Q nd do you know if, in fact, in each year from 2011 to 2020, you did, in fact, receive an engagement letter?
Yes, we did.
Q Okay. For each Statement of Financial Condition engagement, from 2011 to 2020, did Mazars receive a supporting data spreadsheet from the Trump Organization?
Yes. Jeff Supporting Data.
Q For your Statement of Financial Condition engagement from 2011 to 2020, did Mazars maintain a control version of the supporting data spreadsheet?
Say that again, please?
Q Did you maintain, in each year from 2011 to 2020, a control version?

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Yes, we did.
Q Okay. For each Statement of Financial Condition engagement from 2011 to 2020, would the final version of the supporting data spreadsheet tie out to the final Statement of Financial Condition?
Yes, it did.
Q nd for each year for -- as of June 30 year, from 2011 to 2020, did Mazars require a signed representation letter from the Trump Organization in order to issue the Statement of Financial Condition?
It would have been signed by Trump Organization. Like I said, it may have been signed by the trustees, in the later years.
Q Okay. But in each year, you would have required a representation letter in order to release the statement?
Yes, we did.
Q nd for each statement from 2011 to 2020, did Mazars receive a signed representation letter from the Trump Organization?
Yes, we did. Or the trustees.
Q Or the trustees. We can go through the document in detail, now.
MR. W LL CE: So, could we please put up, on the -- well no.
Would it be helpful if we actually put the

document up on the screen? I know typically we do it before it's admitted, for you to see it. Is it helpful if we put it up on the screen?

MR. KISE: This is this one?

MR. W LL CE: Yes. I handed you a copy.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, do you recognize the document you were just handed?

Yes, I do.

Q nd what is this document?

This is the engagement letter, the Trump -- to prepare the Statement of Financial Conditions for Donald J. Trump as of June 30, 2012.

MR. KISE: Your Honor, we just assert our statute of limitations objection.

THE COURT: I understand the objection. Same ruling, et cetera.

Q nd does this appear to be the final engagement letter?

Yes, it does.

Q Okay. You can put that one down.

MR. W LL CE: Can we put up PX793. Native.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you are being handed what's a pull sheet for a document that's produced in an Excel format. We have put up on the screen a copy of the Excel file that was attached at that location. It's Plaintiff's Exhibit 793.

Based on what you see on the screen, do you recognize this document?

Yes. This is what we have been calling the Jeff Supporting Data for the Statement of Financial Conditions for Mr. Trump's financial statement, as of June 30, 2012.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled, but understood.

Q nd again, what is indicated by the red letters, PBC?

Prepared by client.

Q Okay.

MR. W LL CE: We can take that down.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document that is marked as Plaintiff's Exhibit 815. Do you recognize this document?

Give me a second, please.

Q Sure.

Okay. Yes, I do.

Q nd what is this document?

It's the Statement of Financial Condition for Donald

J. Trump for the year June 30th, 2012. In this case it looks like it was sent to the client by PDF, by email.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled.

Q nd is that a copy of the -- is that the final copy of the Statement of Financial Condition?

Yes, it is.

MR. W LL CE: Your Honor, I'm not saying the words, We would ask to have this moved into evidence, but I assume that once the objection is overruled, it comes in. Or, would you like me to make that clear on the record?

THE COURT: Well, why don't you make it clear, and we'll see if there's an objection, other than what's already been objected to.

MR. KISE: Right. There won't be an additional objection, but it's up to Mr. Wallace to move them into evidence, or for your Honor to.

THE COURT: Unless I hear an objection in the next three seconds, it is now admitted into evidence.

MR. W LL CE: Going forward, do the People want me to -- should we be saying the magic words, We would like to move this into evidence? We have had a number of documents where I haven't always said it.

MR. KISE: That's usually how trials work, your Honor, but --

MR. W LL CE: Trials work in many ways.

MR. KISE: That's been my experience, in the last 33 years.

THE COURT: Yes. We might as well use the magic words.

MR. W LL CE: Is there any objection?

MR. KISE: That's why I keep standing up and making that objection, because there's a process.

MR. W LL CE: There are plenty of bench trials where you don't say the magic words, but I will say the magic words, and I will ask if we could let the record reflect that the exhibits that were shown to Mr. Bender yesterday, where the objections, or the ones that were objected to and were overruled, are admitted into evidence, record-wise.

MR. KISE: Other than the objections that have been raised and overruled, no further objections.

THE COURT: ll of yesterday's and today's documents are hereby officially admitted into evidence, over objection.

Q Mr. Bender, I've just handed you a document marked Plaintiff's Exhibit 792. Do you recognize this document?

Yes, I do.

Q nd what is this document?

This is the letter of representation for the Statement

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

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled, and it's in evidence.

MR. W LL CE: nd it's in evidence. Thank you, your Honor.

(Whereupon, Plaintiff's Exhibit 792 was received in evidence.)

Q Mr. Bender I'm going to direct your attention to the first paragraph. It states, "We are providing this letter in connection with your compilation of the Statement of Financial Condition of Donald J. Trump as of June 30, 2012, the statement. We confirm that we are responsible for the fair presentation in the Statement of Financial Condition and conformity with accounting principles generally accepted in the United States of merica."

Would Mazars have issued the Statement of Financial Condition if you did not receive this representation letter?

No, we would not have.

Q Would Mazars have issued the Statement of Financial Condition if it learned that any of the financial statements in this letter were not true?

No, we would not have.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have just been handed a document that has been marked Plaintiff's Exhibit 705. Take a moment.

Do you recognize the document?

Yes, I do.

Q nd what is the document?

This is the engagement letter to compile the Statement of Financial Conditions for Donald J. Trump as of June 30, 2013.

I may have said prepare in the past times. I should have said compile.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled.

Magic words?

MR. W LL CE: Your Honor, we move Exhibit 705 into evidence.

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

(Whereupon, Plaintiff's Exhibit 705 was received in evidence.)

MR. W LL CE: You can put the evidence down, now.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed an exhibit that is marked Plaintiff's Exhibit 708. It's a pull sheet for a document that was produced as an Excel file. We have put a copy of that file up on the screen, here. Based on what you see on the screen, do you recognize this document?

Yes. This is the Jeff Supporting Data for the Statement of Financial Condition for Donald J. Trump, as of June 30, 2013.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled.

Q I'll just refer you, again, to the red letters PBC. What do those stand for?

Prepared by client.

MR. W LL CE: Your Honor, we ask this document be admitted into evidence.

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

(Whereupon, Plaintiff's Exhibit 705 was received in evidence.)

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document that has been marked Plaintiff's Exhibit 707. I'll give you a moment to look through it.

Mr. Bender, do you recognize this document?

Yes, I do.

Q nd what is it?

It's a compilation of Donald J. Trump's Statement of Financial Condition as of June 30, 2013.

Q nd does this appear to be the final version?

Yes, it does.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled.

MR. W LL CE: Your Honor, I would ask this document be entered into evidence.

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

(Whereupon, Plaintiff's Exhibit 707 was received in evidence.)

Q Mr. Bender --

Just, I may not have used the word compiled for the previously financial statements you showed me. I just want to make sure that I said compiled, for the records. ll the financial statements you showed me were compilations, this morning.

Q They were compilations. Let's turn to the document that's up on the screen here, and the document that you have been handed, it's Plaintiff's Exhibit 706. I'll give you a minute to just look through it.

Do you recognize the document, Mr. Bender?

Yes, I do.

Q nd what is this document?

This is the representation letter for the compilation of the Statement of Financial Conditions for Donald J. Trump as of June 30, 2013.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled.

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MR. W LL CE: Your Honor, we would ask that the document be entered into evidence.
THE COURT: Granted. It's now in evidence.
(Whereupon, Plaintiff's Exhibit 706 was received in evidence.)
Q If we go to the bottom on page three, do you recognize that signature at the bottom of this page?
Yes. It's llen Weisselberg.
Q If we go back to the top, the first paragraph states, "We are providing this letter in connection with your compilation of the Statement of Financial Condition of Donald J. Trump as of June 30th, 2013. The statement. We confirm that we are responsible for the fair presentation in the Statement of Financial Condition, in conformity with accounting principles generally accepted in the United States of merica."
Would Mazars have issued the Statement of Financial Condition if Mr. Weisselberg did not make the representations in this letter, on behalf of Mr. Trump?
No, we would not have.
Q Would Mazars have issued the Statement of Financial Condition if it learned that any of the representations in the letter were not true?
No, we would not have.
(Whereupon, a document was displayed, and handed to the witness.)

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Q Mr. Bender, you have been handed a document that has been marked has Plaintiff's Exhibit 717. You can take a moment to look through it.
Do you recognize the document?
Yes, I do.
Q nd what is it?
It's the engagement letter to compile the financial statements, Statement of Financial Condition of Donald J. Trump, as of June 30th, 2014.
MR. KISE: Objection. Statute of limitations.
THE COURT: Overruled.
MR. W LL CE: Your Honor, we would ask this document be entered into evidence.
THE COURT: Granted. It's now in evidence.
(Whereupon, Plaintiff's Exhibit 717 was received in evidence.)
(Whereupon, a document was displayed, and handed to the witness.)
Q Mr. Bender, you have been handed a document that has been marked as Plaintiff's Exhibit 719. It's a pull sheet for a document that was produced as an Excel file. The copy of that file is up on the screen, in front of you.
Do you recognize this document?
Yes, I do.
Q What is this document?

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This is the Jeff Supporting Data for the Statement of Financial Conditions for Donald J. Trump, as of June 30, 2014.
MR. KISE: Objection. Statute of limitations.
THE COURT: Overruled.
MR. W LL CE: Your Honor, I would ask that this document be entered into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 719 was received in evidence.)
(Continued on the next page.)

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Q Mr. Bender, you've been handed an exhibit marked as Plaintiff's Exhibit 730. I'll give you a minute to look through.
Mr. Bender, do you recognize this document?
Yes, I do.
Q This is a compilation of Donald J. Trump Statement of Financial Condition as of June 30, 2014?
MR. ROBERT: Objection. Statute of Limitations.
THE COURT: Overruled.
MR. W LL CE: Your Honor, we have additional information that may be relevant to the objection. Can you go to the third page of document, please?
Q Mr. Bender, what is the date at the bottom near the signature?
November 7, 2014.
Q What does that date indicate?
That is the date we finalized the financial statement and the date of representation.
MR. ROBERT: That doesn't change the objection. The objection is-- one is for all. Nonetheless, my clients don't believe they are --
Even though it's an objection for one, it's an objection for all. My clients, in particular, do not believe they're bound by the tolling agreement. So, to preserve their ppellate rights, we object to anything up

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to February 6, 2016, and respectfully object based on Statute of Limitations.

THE COURT: I knew you were an expert in the CPLR.

MS. H BB : Not to be redundant, but, I'm going to preserve the same objection for my clients as well, and, I agree, it's one for all.

THE COURT: Understood. Overruled, but, I understand the objection.

MR. ROBERT: Thank you, sir.

MR. W LL CE: I guess I'm curious, since Cliff's a CPLR expert, if it's admissible, at least for some of the defendants, do we have to have the objections preserved for the Statute of Limitations argument?

MR. ROBERT: bsolutely.

THE COURT: I think they do.

MR. KISE: bsolutely.

MR. W LL CE: Your Honor, we would move this document be entered into evidence.

THE COURT: Granted. It's in evidence over objection, as to certain defendants.

MR. KISE: ctually, it's all for one and one for all, under our agreement. I just got tired of standing up, so I let Mr. Robert do it.

THE COURT: Overruled objection for all the

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defendants.

MR. KISE: Thank you.

MS. H BB : Thank you.

MR. ROBERT: Thank you.

Q Mr. Bender, you've been handed a document that's been marked as Plaintiff's Exhibit 718.

Do you recognize this document?

Yes, this is the letter of representation for the compilation of Statement of Financial Condition of Donald J. Trump as of June 30, 2014.

Q If we take a look, the header on the document is the Trump Organization. That's the same as the previous years; is that correct?

Yes, sir.

Q The top states:

"We're providing this letter in connection with your compilation of Statement of Financial Condition of Donald J. Trump as of June 30, 2014 (the statement.) We confirm that we are responsible for the fair presentation in the Statement of Financial Condition in conformity with accounting principles generally accepted in the United States of merica."

Do you see that language?

I do.

Q Would Mazars have issued a Statement of Financial

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Condition if llen Weisselberg had not made the representation on behalf Mr. Trump?

No.

Q Would Mazars have issued a Statement of Financial Condition if they knew any of the representations were not true?

No.

Q Mr. Bender, I handed you a copy of Plaintiff's Exhibit 786. This is the document you saw yesterday previously admitted into evidence over defendants' objection. You can take a look. You should have -- you still have 718, as well? You have 718 and 786.

Can you take a moment and look at those, compare those two documents? It's two pages, so I'll give you a minute.

Mr. Bender, did you have a chance to compare the two letters?

I gave them both an overview, yes.

Q part from the dates listed, is the language in the two letters identical?

It appears to be, pretty much.

Q Does that mean all the representations Mazars required in connection with 2011 Statement of Financial Condition were also required for the 2014 Statement of Financial Condition?

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Yes. Substantially, that's correct.

Q Mr. Bender, you've been handed a document that's been marked as Plaintiff's Exhibit 727. I'll give you a minute to look for the document.

Mr. Bender, do you recognize this document?

Yes, I do.

Q What is it?

It's the engagement letter, compilation of Statements of Financial Condition of Donald J. Trump as of June 30, 2015.

MR. ROBERT: Objection. Statute of Limitations.

THE COURT: Overruled.

MR. W LL CE: Your Honor, we ask this document be entered into evidence.

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

Q Mr. Bender, you have been handed a document marked as plaintiff's Exhibit 731. It's pull sheet for a document produced in Excel format. There's a copy of that Excel file up on the screen.

Do you recognize this document?

Yes, I do.

Q What is it?

The Jeff Supporting Data for the Statements of Financial Condition of Donald J. Trump as of June 30, 2015.

Q What is indicated by the red letters, PBC, at the

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top?
Prepared by client.
Q Was this the final supporting data spreadsheet for the 2015 Statements of Financial Condition?
It appears so, yes.
MR. ROBERT: You want to move it in first?
MR. W LL CE: I move, over your objection.
MR. ROBERT: Objection. Statute of Limitations. He used the magic words this time.
THE COURT: Overruled. Those are my magic words or magic word.
MR. W LL CE: I ask this document be moved into evidence.
THE COURT: Granted. It's now in evidence.
Q Mr. Bender, you've been handed a document marked Plaintiff's Exhibit 729. I'll give you a minute to peruse it.
Mr. Bender, do you recognize this document?
Yes, I do.
Q What is it?
The compilation of Donald J. Trump's Statements of Financial Condition as of June 30, 2015.
Q Does this appear to be the final copy?
Yes, it does.
MR. W LL CE: Your Honor, I ask this be moved into evidence.

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MR. ROBERT: Objection. Statute of Limitations.
THE COURT: Overruled. It's now in evidence.
Q Mr. Bender, you've been handed a document that's been marked as Plaintiff's Exhibit 728. Take a minute to look through.
Do you recognize this document?
Yes, I do.
Q What is this document?
This is the representation letter for compilation of Statements of Financial Condition for Donald J. Trump as of June 30, 2015.
MR. W LL CE: Your Honor, I ask this document be entered into evidence.
MR. ROBERT: I think we're past the February 6, 2016. So, no Statute of Limitations as to this document. Thank you.
THE COURT: Granted. It's now in evidence.
MR. W LL CE: If you can just scroll down to the bottom of this document.
Q Do you recognize the signature at the bottom?
Yes. It's llen Weisselberg's.
MR. W LL CE: Can you go back to the top?
Q First paragraph states:
"We're providing this letter in connection with your compilation of Statements of Financial Condition of

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Donald J. Trump as of June 30, 2015. We confirm that we're responsible for the preparation and fair presentation of the Statements of Financial Condition in accordance with accounting principles generally accepted in the United States of merica and the selection and application of accounting principles."
Do you see that language?
I do.
Q Would Mazars-- Mr. Bender, would Mazars have issued the 2015 Statement of Financial Condition if llen Weisselberg did not make these representations in this letter on behalf of Mr. Trump?
No, it would not.
Q Would Mazars --
THE COURT: One minute.
MR. ROBERT: I actually am going to make a Statute of Limitations objection to this as well because it's cited to conduct in 2015. So, we renew the objections.
THE COURT: Understood. Overruled.
Q Would Mazars have issued the 2015 Statements of Financial Condition if it learned any of these representations were not true?
No, it would not have.
Q Mr. Bender, you've been handed a document that has

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been marked plaintiff's Exhibit 740. I'll give you a minute to look through it.
Mr. Bender, do you recognize this document?
Yes, I do.
Q What is it?
It's the engagement letter, compiled the Statements of Financial Condition of Donald J. Trump as of June 30, 2016.
MR. W LL CE: Can we go to last page, a production number that ends 62?
Q Do you recognize the signature here at the bottom of the page?
Yes, I do.
Q Whose signature is that?
llen Weisselberg's.
MR. W LL CE: We ask this document be entered into evidence.
MR. ROBERT: Objection. Statute of Limitations.
THE COURT: Isn't it past the Statute of Limitations?
MR. ROBERT: No, your Honor, because, it's certifying the material accuracy of the financial statement of June 30, 2016. Since our position is the statute runs to February 6th of '16, we preserve the objection.

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

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

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

Paragraph number one states -- well, I'll read the introduction.
"The objective of our engagement is, one, prepare a financial statement in accordance with accounting principles generally accepted in the United States of merica based on information provided by you."
Who, again, is the "you" in that sentence?
The Trump Organization and the trustees.
Q Who is responsible for preparing the statement in accordance with accounting principles generally accepted in the United States of merica?
The Trump Organization and the trustees.
Q If you look at the next one, number two, it says: " pply accounting and financial reporting expertise to assist you in the presentation of the financial statement without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statement in order for it to be in accordance with accounting principles generally accepted in the United States of merica."
Is that consistent with the practice Mazars would have followed in prior years?
I'd have to compare the two but, I believe, yes. It would be consistent with our practice.
Q So, separate and apart from the language, the

practice would remain the same?
Yes.
Q Okay. Please, scroll down to the bottom paragraph. It states: "We're not required to, and will not, verify the accuracy or completeness of the information you will provide to us for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion. ccordingly, we will not express an opinion or a conclusion nor provide any assurance on the financial statement."
Why would Mazars not verify the accuracy or completeness of any information provided?
You don't do those types of procedure in a compilation. That is what we're being asked to perform.
Q If you look at the paragraph that it's in italics, underneath the statement "our accountant's compilation report is expected to include" -- I won't read it into the record. I'll give you a minute to just look at it.
Just the first paragraph?
Q First two. ctually, the one that starts: "The accompanying Statement of Financial Condition." So, what's being reflected in these paragraphs?
These are basically the G P exceptions we discussed yesterday and that G P is-- the accompanying statement does not reflect above-noted items.
Q Who was responsible for determining what exceptions

to G P will be in the Statements of Financial Condition?
Trump Organization.
Q If you look at the next paragraph, I will read that one into the record. It says: "Further, our report will include the following: Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the Statements of Financial Condition, users of this personal financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised Statement of Financial Condition prepared in conformity with accounting principles generally accepted in the United States of merica."
I'd like to direct your attention to the phrase "users of this personal financial statement should recognize that they might reach different conclusions." The reason for those different conclusions -- what's the basis for the different conclusions a user might reach?
Because if you didn't have these G P exceptions, these financial statements would be presented in a different format.
Q So, is the G P exceptions disclosed above the reason someone might have a different view of this financial condition of Mr. Trump? Is that what's being said?
Yes.

Q If you look at the paragraph underneath that, it states: "Our engagement cannot be relied upon to identify or disclose any financial statement and misstatements including those caused by fraud or error or to identify or disclose any wrongdoing or noncompliance with laws and regulations. However, we will inform you of any material errors and any evidence or information that comes to our attention during the performance of our procedures that fraud may have occurred."
With respect to this period from 2016, do you remember any instances where you identified any fraud that may have occurred at the Trump Organization?
It's not the Trump Organization. This is a Statement of Financial Condition of Donald J. Trump.
Q I'll rephrase the question. Do you know, from the period of this letter in 2016, if you, in the course of compiling the Statements of Financial Condition, identified any fraud at the Trump Organization?
Trump Organization?
Q Did you identify any fraud at the Trump Organization?
We didn't do any work as of June 30th.
Q If we go down to the last paragraph under the heading "your responsibilities," it states: "The engagement to be performed is conducted on the basis that you acknowledge and understand that our role is to prepare financial statements in accordance with accounting principles generally accepted in

the United States of merica and assist you in the presentation of the financial statement in accordance with accounting principles generally accepted in the United States of merica."
Who is the "you" that's being referred to in this paragraph?
The Trump Organization and trustees.
Q Let's look at what the responsibilities are. They're on the next page. Under item one, it states: "The selection of accounting principles generally accepted in the United States of merica as the financial reporting framework to be applied in the preparation of the financial statement."
Which party is responsible for selecting the accounting principles to be used?
The Trump Organization and trustees.
Q Item two states: "The preparation and fair presentation of financial statement in accordance with accounting principles generally accepted in the United States of merica and the inclusion of all informative disclosures that are appropriate for accounting principles generally accepted in the United States of merica, other than previously noted."
Let's start with the end there. Do you know what's being referred to in the "other than previously noted?"
The G P exceptions that were delineated in italics

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in the beginning.
Q So, who is responsible for this paragraph?
The Trump Organization and trustees.
Q Do you understand what is meant by inclusion of all informative disclosures?
Generally, they include notes to financial statements.
Q So, the actual text of what's contained in that financial statement?
Yes.
Q Look at item number 25. It states: "Compliance with the laws and regulations applicable to its activities."
Do you know who the "its" is in this?
The Trump Organization and the trustees.
Q So, who's responsible for their compliance with the laws and regulations?
The Trump Organization and trustees.
Q Look at the next item number six. It states: "The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments you provide us for the engagement."
Why is this item included?
Because the parties we discussed are responsible for the accuracy of the compilation of records, documents, explanations, and other significant items and judgments.

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Q Item seven states: "To provide us with access to all information of which you are aware is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters."
What's encompassed within information that is relevant to the preparation and fair presentation of financial statements?
ny information that they know or documents that they know pertaining to the financial statement.
Q If there was a document that related to the value of the asset but they weren't using it for their specific form valuation, would you still expect that to be shared?
Yes, I would.
Q Mr. Bender, you've been handed a document that has been marked as plaintiff's Exhibit 3003. Do you recognize this document?
Yes, I do.
Q What is it?
This is certain data that was sent to us from the Trump Organization for the preparation of the June 30, 2016, compilation of Statement of Financial Condition for Donald J. Trump.
MR. W LL CE: Your Honor, we ask this document be entered into evidence.
MR. ROBERT: Objection. Statute of Limitations.

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MR. KISE: Just -- go ahead. Sorry. I just have a housekeeping question.
THE COURT: Overruled on Statute of Limitations. What's the housekeeping question?
MR. KISE: Maybe it's me. I want to make sure there's-- it looks like there's two copies of the Statement of Financial Condition, one redline and the other is very thick. So, I'm just.
MR. W LL CE: I can ask, maybe, Mr. Bender if he understands it and, if not, I can make a proffer on something.
MR. KISE: That's fine.
Q So, I believe your testimony was -- I think you said that this was information that was provided to you by the Trump Organization in connection with the preparation of Mr. Trump's Statement of Financial Condition; is that correct?
Yes.
Q I'll get to what some of the attachments are in a moment but answer first. Who is Patrick Birney?
He's an employee of the Trump Organization.
Q Do you know why he's the one sending you this information?
t some point, he started being involved with the Statements of Financial Condition and helping Jeff McConney.
Q Helping Jeff McConney?

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Yes.
Q Did you understand that he reported Mr. McConney I?
Yes, I believe he did.
Q So, I think we recognize the name of the first attachment. What is that one?
Jeff Supporting Data.
Q We can go through it, but, I believe there's two file names separated by semicolons. I'll attempt to read them into the record.
The first one states: "SOFC 02-17-2017 VPB 2.17.17 clean.doc," and the second file states: "SOFC 2.17. 2017 VPB 2.17.17.doc."
Do you have an understanding of what those two files are?
I can guess. I'm not sure.
Q Based on your experience of working with Mr. Birney?
I can't-- I can make a guess but not based on working with Mr. Birney.
Q What was your guess?
I'm guessing--
MR. ROBERT: Objection.
THE COURT: Sustained. Not allowed to have speculation.
(Continued on following page..)

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

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

Q nd there are two files that are dot doc files, that are SOFC 21717.

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

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

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

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

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

MR. W LL CE: The full document. The document comes with the attachments.

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

MR. W LL CE: Yes.

MR. ROBERT: Thank you for the clarification.

THE COURT: Ten-minute warning.

MR. W LL CE: bsolutely fine, your Honor.

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

Q Mr. Bender --

MR. W LL CE: If we could pull up the native file.

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

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

Q nd do you have an understanding of who would have prepared this document?

It would have been somebody -- it would have been the Trump Organization.

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

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

Q nd what would you have done with this document, when you received it?

We would insert it into our binder, presumably.

MR. W LL CE: Let's pull up Exhibit 742.

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

Yes, I do.

Q nd what is this document?

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

Q nd what do the letters PBC stand for?

Prepared by client.

Q nd what was the use of this table?

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

MR. W LL CE: If we could --

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

I can clarify the question.

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

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

The last document you gave me was 2016, also.

Q Correct.

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

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

THE COURT: Do you want to withdraw it?

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

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

MR. W LL CE: No, I didn't. This was the same exhibit number.

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

MR. W LL CE: Different file name.

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

MR. W LL CE: I would say that the leading

question was in response to a general response from the witness, and I was clarifying his answer.

THE COURT: Oh. In all my years of objections about leading questions, I never heard the defense that, Well, he was just asking for a qualification.

MR. ROBERT: If that works, we'll use it all the time. That's fine.

THE COURT: It seems, to me, a legitimate device in the search for the truth. Overruled.

MS. H BB : Your Honor, before we proceed, I just wanted to let the court reporter know that this is actually Mr. Robert, not Mr. Solomon. I want to make sure the record is clear.

THE COURT: That would be a bad mistake to make.

MR. SOLOMON: Okay, your Honor.

THE COURT: That's Mr. Solomon.

MS. H BB : That's Mr. Solomon.

Q So, we were discussing how this document operates what's indicated by the numbers in blue, in row 84100.01?

Those are the cross references to the underlying work papers in the Mazars binder in that case, and an example, the cash worksheet appears to be worksheet 4100.01.

(Whereupon, a document was displayed, and handed to the witness.)

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

marked as Plaintiff's Exhibit 2587. This is a document that was produced as an Excel file, so I've put a copy of the Excel file that was produced up on the screen. Do you recognize this document -- let me introduce -- this document has been produced with, and is listed on plaintiff's exhibit list, as a file name of 4100.01 Cash Balances as of 6/30/16 - final VPB 2.17.17.XLS.XLS.

Do you recognize this document?

Yes. This is the Excel file for the cash and short-term investments for the compilation of Donald J. Trump's Statement of Financial Condition as of June 30, 2016.

MR. W LL CE: Your Honor, we would ask that this document be marked into evidence.

MR. ROBERT: Objection. Statute of limitations.

THE COURT: Overruled.

(Whereupon, Plaintiff's Exhibit 2587 was received in evidence.)

Q gain, what does the red letters at the top say, PBC, what do those indicate?

Prepared by client.

Q nd what would you do with this table?

It would -- the bottom total should hopefully tie into the Jeff Supporting Data.

Q Okay. So this is the support for the number on the document we were just looking at?

Yes, sir.

Q If we look at the lettering in blue, on row one, it states, "Per discussion with J. McConney, 2.717, cash balances are from bank reconciliations and not individual balance sheets."

Can you just tell me, what does that mean?

I'm not 100 percent sure, today.

Q Do you recall if Mr. McConney was still involved in the preparation of the Statement of Financial Condition, as of February 27, 2017?

He was involved with the compilation for the Statement of Financial Condition of Donald J. Trump as of June 30th, 2016. I don't know if you said '16 or '17.

Q So, just to clarify, this is a discussion that happened in 2017, but it's for the as-of-June 30, 2016 statement?

It appears to be so, yes.

Q Do you have a recollection as to why work on the as-of-June 30, 2016 statement was happening in 2017?

I have a general recollection.

Q What's your general recollection?

I think things -- Mr. Trump became president, and things were a little crazy.

Q Okay.

For the Trump Organization.

Q If we go down to rows 69 through 72, I just want to direct your attention to -- there's two red arrows -- let me start by staying, we are on row 69. There's two red arrows. One going up, and one going down, and they each go into a red line. What is indicated by that symbol?

I believe, and I would have to double check, I believe that it was footed. dded done.

Q So, someone has confirmed that the formula that's operating there, it had been prepared correctly?

Somebody would have taken the --

Q Okay.

-- mouse, and would have went down with it, and made sure the math checks.

MR. W LL CE: I think we are done with this document, if that's a good time to break, your Honor.

THE COURT: I don't allow breaks longer than 10 minutes, but we are going to have 15 minutes to have the 10-minute break. So, please be back at 11:45, everyone.

MR. W LL CE: Thank you.

(Whereupon, a recess was taken.)

* * * * * *

THE COURT: You know, for various reasons, I want to run a tight ship. It seems like I'm going to have to be a little firmer in these the timing of these breaks. I said -- another example of lame humor -- we'll take a

10-minute break, but you can have 15 minutes. Maybe you could push that to 20, but I'm starting in 20 minutes. If I say we are talking a 10-minute break in 15 minutes, and if you are not here, I'm starting anyway. So, please be here.

I see Mr. Kise is nodding. You understand. Mr. Robert.

Ms. Habba.

10-minute break, at most 20 minutes.

ll right. Let's continue.

Before we do, I looked at Kulak, the case that I mentioned before, very closely. Kulak versus Nationwide, 40 N.Y.2d 140, and at page 145 -- depends which version -- the Court of ppeals makes clear, not just that continuing objections can be made, but they don't even have to be made.

Quote, "The objection, thus clearly made and overruled, served as a continuing objection, and made it unnecessary to challenge other improper evidence," close quote.

The next sentence says, quote, " lthough objection was not made to every question during this line of testimony, the objections were," internal quote, "Were sufficient to cover the whole of the material accepted as evidence."

So, I beg to differ with the advice that the defendants received. You can make continuing objections, and you can just object, and it's understood that that will cover the exact or similar, same situations.

MR. KISE: Just looking a this, your Honor, briefly, and I didn't get to look at it on the break, even though it was a long break, but just pulling it up now, I think this goes -- and I've sent it off to our folks. I think this goes to what I said yesterday, the difference between testimony and documents. This case relates, I think, from what I'm seeing more, to testimony, and that's why with Mr. Bender, we have made one blanket objection as to testimony, which is sufficient. But, I don't know that that covers us with documents.

But, I can assure you, to the extent that I don't -- and Mr. Robert, so we don't have to keep standing up and down -- if we can come up with a way to satisfy our side, we would do that. I just think this is testimony and not documents, because it speaks to, defendant objected only to the first of three hypothetical questions. The last hypothetical question -- the first three hypothetical questions addressed to the first expert, it was not error to admit, into evidence, testimony as to the possibility of adequate representation. I think that's the distinction that we are drawing here, as I did yesterday, I mentioned

that. But we will continue to look into it, to save all of us the --

MR. W LL CE: Your Honor, I can, also, though -- I think we have offered to -- the parties exchanged exhibit lists that contained the information. If they want to do a list that specifies the document to which they object, based on statute of limitations ground and timing, just that, and your Honor can rule on the list, regardless of whether or not -- and then they can preserve their objections that way, we would be happy to do something along those lines.

MR. KISE: We'll look at that as well, your Honor. nything to expedite these process, I can assure you.

THE COURT: s I said much earlier, Mr. Kise and everyone at defense table, I'll let you do what you feel like you need to do.

MR. KISE: Understood and appreciated. But we'll streamline it, as much as we possibly can.

THE COURT: nd by the way, I didn't read the exception into this that you are reading into it, but you know, reasonable minds can differ. Okay.

I hope he is closer, this time.

(Whereupon, the witness resumed the witness stand.)

THE COURT: Please proceed.

CONTINUED DIRECT EX MIN TION

BY MR. W LL CE:

Q We have three minutes of good morning left, Mr. Bender, so good morning, again.

MR. W LL CE: I would like to offer the witness a new document.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you are being handed a document that has been marked Plaintiff's Exhibit 756. Can you just take a moment to look through this document?

THE COURT: nd while he is looking, I'll ask the court officer to hand a copy of the Kulak case to the defense table, for their convenience.

MR. KISE: Thank you.

Q Mr. Bender, do you recognize this document?

Yes, I do.

Q nd what is this document?

This is the compilation of Donald J. Trump's Statement of Financial Condition, as of June 30, 2016.

Q nd does this appear to be the final version?

Yes, it does.

MR. W LL CE: Your Honor, we ask that this document be moved into evidence.

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

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

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

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stated at their estimated current values?
The Trump Organization, and the trustees.
Q Okay. So, if we could just flip to the page five of this report, it's the production number that ends 1987, if we look at the second paragraph, it states, "The estimated current value of 600 million -- $631 million, is based on an evaluation by the trustees in conjunction with their associates and outside professionals, applying a capitalization rate to the cash flow to be derived from building operations."
So, who is responsible for deciding to use this technique, to value Trump Tower?
Trustees, in conjunction with their associates and outside professionals.
Q nd did Mazars undertake any procedures to determine if that was an appropriate means of valuing Trump Tower?
No, we did not.
Q nd did Mazars undertake any accounting procedures to determine if the 631 million number was accurate?
Say the question again, please?
Q Did Mazars undertake any accounting procedures to determine if the $631 million number was accurate?
nything that -- I would have to see the Jeff Supporting schedule, to see if we footed any other, or if we did any other work.
Q But would you have undertaken any kind of audit or

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review to check the number, the $631 million number?
No, we would not have done that.
(Whereupon, a document was displayed, and handed to the witness.)
Q Mr. Bender, you have been handed a document that has been marked as Plaintiff's Exhibit 741. I'll give you a moment to look through it.
Do you recognize this document, Mr. Bender?
Yes, I do.
Q nd what is this document?
It's a representation letter for the personal -- for the compilation of the financial statements of Donald J. Trump, as of June 30, 2016.
MR. W LL CE: Your Honor, we would ask that this document be moved into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled.
(Whereupon, Plaintiff's Exhibit 741 was received in evidence.)
Q Mr. Bender, would Mazars have issued the Statement of Financial Condition if the trustees --
MR. W LL CE: Well, let's actually strike that question.
Can we turn to the last page of this document?
THE COURT: The correct term is withdrawn, not

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strike.
MR. W LL CE: Thank you, your Honor.
Q If we take a look at the bottom of this page, do you recognize the signature on the left hand side of the screen?
Yes. That's -- excuse me. That's llen Weisselberg.
(Continued on the next page.)

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Q In what capacity is he signing this letter?
He signed it as Chief Financial Officer of the Trump Organization and as Trustee of Donald J. Trump Revocable Trust.
Q Do you recognize the signature on the right-hand side of the screen?
Yes, it's Don, Jr.'s signature.
Q In what capacity is he signing this?
s Executive Vice President of the Trump Organization and Trustee of Donald J. Trump Revocable Trust.
Q Would Mazars have issued, as of June 30, 2016, Statements of Financial Condition for Donald J. Trump if the trustees had not signed this representation letter?
No, they would not.
Q I'd like to direct your attention to the second page of this document. Paragraph two states: "We've made available to you all financial records and related data and any additional information you requested from us for the purpose of the compilation. We have not, knowingly, withheld from you any financial records or related data that, in our judgment, would be relevant to your compilation."
You see that language?
Yes, I do.
Q Would Mazars have issued the Statements of Financial Condition if the trustees had not made that representation?

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No, it would not.
Q fter the date of this letter, which was signed -- after the date of this letter on March 10, 2017, did you learn whether or not the Trump Organization had, in fact, not provided you with all financial records and related data and any additional information requested for the purpose of the compilation?
I'd have to double check 2016. I'm not sure of 2016.
Q So, after -- I'm trying to clarify. fter this letter, did you learn this representation was not accurate?
I can't tell you the specific year, off the top of my head.
Q t some point, did you learn this representation was inaccurate?
I'm not sure for the year June 30, 2016. I'd have to go back and look at that to answer the question.
Q t some point, did you learn, during the course of -- withdrawn.
t some point did you learn that the Trump Organization had not made available to you all financial records for any of your compilation engagements?
Yes, sir.
Q What did you learn --
There were certain matters -- certain documents were

shown to us, appraisals, that were in their possession that we did not know about.

THE COURT: Please keep your voice nice and loud.

THE WITNESS: I apologize. My throat is --

THE COURT: That's because you're talking too much the last few days.

THE WITNESS: That's because I'm retired. I'm not used to talking.

Q So, Mr. Bender, how did you learn there were appraisals you had not been provided?

I believe the first time I saw them were interviews with the District ttorney of the City of New York.

Q Was that information you thought you should have received in the course of preparing a compilation engagement?

Yes.

Q Let's go down to another portion of this letter. If you look at item number 15, item 15 states: "We've responded fully and truthfully to all inquiries made to us by you during your compilation."

fter the receipt of this letter, did you learn whether or not that representation was inaccurate?

It was inaccurate for not-- I can't tell you for this year but for various years in total, yes.

Q Based on your understanding, why was that

presentation inaccurate?

Because they were not giving us all the documents that we needed, potentially, to compile the compilation.

Q So, had you made inquiries for those documents?

In many, yes, I did. Yes.

MR. KISE: Objection. Which documents? He's testified he's not sure which year it was. So, which documents are we talking about?

THE COURT: Sustained.

MR. KISE: What year? When? When --

THE COURT: Sustained. I think we need to be a little more particular.

Q Mr. Bender, you testified that the Trump Organization was not giving us all the documents that we needed to potentially compile the compilation. What documents are you referring to?

There were certain appraisals out there for a number of years.

Q Do you remember, specifically, which years?

Not all years off the top of my head, no.

Q Do you remember some of the years, off the top of your head?

I think it was '15, '16, something like that but I'd have to double check.

Q So, you made inquiries for appraisals to the Trump

Organization?

Yes.

MR. KISE: Objection. Which year?

THE COURT: I may be second-guessing myself but I think he can ask if it was done, and, you can cross-examination well, when was it done.

MR. KISE: Okay, if he's asking generally, did he ever make inquiries about appraisals, that is one thing. He's asking, specifically, the representation with respect, rather, to this particular year. I think that's quite another.

THE COURT: I don't think he was but let's see if he'll clarify.

MR. W LL CE: I appreciate Mr. Kise's evidence coming in but--

Q Did you ask the Trump Organization, during the course of your work on compilation reports, for appraisal reports?

Yes, I think it started at the time-- first time, my recollection of asking where the appraisals were, they gave me certain appraisals for TIHT Commercial LLC of Trump Plaza, LLC, and, I think those questions I asked in most years of Jeff McConney. That was started, based on, I guess, approximately, 2013 or other.

Q Do you have a specific recollection of it starting in 2013?

I recently saw that we had those appraisals appear in 2013. So, that's probably when I asked for them.

Q So, your best recollection is you started asking for appraisals in or about 2013?

Yes.

Q You had asked Mr. McConney, I believe you said?

Yes, most years.

Q Can you describe, to your recollection, how you asked Mr. McConney for those documents?

First time he gave me appraisals, I said, do you have any more appraisals, and, I'd ask every year after that. ll-- most accountants -- I did ask for appraisals.

Q What did he tell you?

"That's all we have."

Q Every year you asked, that's what he told you?

Yes.

Q gain, you don't remember exactly when that practice started?

No, but, I did see that the appraisal appeared around 2013.

Q You've seen an appraisal dated 2013 that conforms to what your memory is?

I saw appraisals in the 2013, the binder for the compilation for the year, as of June 30, 2016.

Q What did you do when you learned that there were

appraisals that had not been given to you?
What did I do?
Q Yes.
MR. KISE: Objection. The timeframe. Back to timeframe. Objection.
MR. W LL CE: He identified the timeframe as during a meeting with the New York District ttorney's Office.
MR. KISE: Is that a timeframe? He said some timeframe but then it was unclear as to which -- I just want the record to be clear.
THE COURT: We all do.
Q Do you remember when?
THE COURT: Hold on a second. Let's start with: Can you remember a specific time when you reacted to this realization.
Q Can you answer the question from the Judge?
It was my first meeting with a Zoom meeting with the District ttorney of the State of New York.
THE COURT: You remember, roughly, when that meeting was?
THE WITNESS: Not off the top of my head.
THE COURT: Can you approximate from point of view of more than speculation but less than certainty?
THE WITNESS: I would say about three years ago,

during COVID. Yeah, it was during COVID but, yes, the late part. Wasn't the first year of COVID.
Q Did you do anything after you learned from that meeting with the District ttorney's Office that there were appraisals you'd not been given?
I was not personally involved in any of those matters. It wasn't handled by me.
Q Were you still working on the compilation for Donald J. Trump's Statement of Financial Condition at the time you learned that information?
No, we did not. So, it had to be after 2020. The date would have to be after June 30, 2020, was, I believe, the last compilation we did.
Q Did you have any conversations with Mr. McConney after you learned this information from the District ttorney's Office?
Pertaining to that matter?
Q Correct.
No, I did not.
Q You had conversations with him on other matters?
Yes. Let me go back.
THE WITNESS: It would have been early part of '21, your Honor.
THE COURT: Just finish the sentence.
Would be the early part of the '21 that we had the

Zoom meeting with D NY.
Q Meaning the District ttorney's Office of New York County?
Somebody taught me this.
THE COURT: D NY.
THE WITNESS: Somebody taught me this. I'm sorry.
Q Mr. Bender, in any given year where you asked for appraisals you were not given -- let me withdraw that question.
THE COURT: He's a quick learner.
Q Mr. Bender, would Mazars have issued Statements of Financial Condition-- without reference to a specific year but, if Mazars learned that the Trump Organization had not provided all appraisals, would you have issued the Statement of Financial Condition?
MR. KISE: Objection. Back to which year?
THE COURT: Overruled. gain, I may be second-guessing myself but you can ask if it was ever done. I don't see a problem with that.
MR. KISE: Which years did he not receive the appraisals? Which years is the government asking him which statements wouldn't have been produced? I mean, there are some years where there might not have been any appraisals provided and some years were there were

appraisals provided but what the government is doing is mashing it all together and saying, in those years that you didn't get appraisals, would you have issued the statements, but, that doesn't speak to the direct point which they have to establish that it was a specific year or a specific appraisal not provided in connection with a specific statement.
Not generally, over a ten-year period, whether appraisals you didn't receive and did that then -- what the --
MR. W LL CE: How would the witness know if he didn't receive an appraisal, apart for the ones shown by D NY?
MR. KISE: ccording to his testimony, he was told by the District ttorney of New York when he didn't receive it. So, if the witness can recall which years that related to and he can recount what he would have done or not have done, based on information he would have received in that particular year, fine; but, if it's no, he can't just speculate generally about --
MR. W LL CE: You're arguing in front of the Judge now.
THE COURT: He is allowed to. Overruled.
MR. W LL CE: Can we go back to --
THE COURT: Subject to the cross-examination.

Q Mr. Bender, would Mazars have issued a Statement of Financial Condition if it knew it had not been provided with all appraisals?
No, it would not.
Q Thank you.
MR. KISE: Just for the record, I didn't object to that last question because of the Kulak case, okay. I'm glad we're on the same page.
Q Mr. Bender, you have been handed a document that has been marked Plaintiff's Exhibit 753. Take a moment to look at this. Do you recognize this document?
Yes, I do.
Q What is this document?
This is the engagement letter compiling the Statement of Financial Condition of Donald J. Trump as of June 30, 2017.
Q Does this appear to be the final letter?
Yes, it does.
MR. W LL CE: Your Honor, I would ask this be entered into evidence.
THE COURT: Granted. It's now in evidence. By the way, I can ask why you're not objecting. Because of the continuing objection rule or because of the date of the document?
MS. H BB : Don't worry, your Honor. I'm about

to object. I'm just letting him do his thing.
THE COURT: Okay.
Q Mr. Bender, I've handed you a document marked Plaintiff's Exhibit 758. It is a pull sheet for a document that was produced to us in the form of an Excel file. We put a copy of the Excel file up on the screen here.
Do you recognize this document?
Yes, I do.
Q What is this document?
This is the Jeff Supporting Data for the Statement of Financial Condition of Donald J. Trump as of June 30, 2017.
Q Does this appear to be the final form?
Yes, it does.
MR. W LL CE: Your Honor, we ask the document be entered into evidence.
MS. H BB : Your Honor, I'll state my objection on the record. To the extent that the 2017 documents look back to 2016, and anything in there before February 2016, we assert the same Statute of Limitations objection.
THE COURT: Maybe this is the right time to discuss this point.
If the defendants make a statement, or any of the defense makes a statement, within the permissible

Statute of Limitations period but it's about events that happened before, isn't that still actionable or am I missing something?
MS. H BB : gain, we've raised these issues with the ppellate Division, which we're preserving. I would like to state the objection that any reference to anything in here before 2016, which I know your Honor has a differing opinion, but, I have to state my objection against it, should not be considered.
THE COURT: I'll just say in front of everyone, I don't see how you can possibly object to a statement that's timely even if it's about a fact that comes before that; but, as you just said, we'll agree to disagree.
MS. H BB : Thank you, your Honor.
THE COURT: Thank you.
Q So --
THE COURT: Objection overruled and we'll ask the witness to answer.
MR. W LL CE: I believe there was a pending request to put this in the record.
THE COURT: It's in.
Q Mr. Bender, you have been handed a document that's been marked Plaintiff's Exhibit 755. I'll give you a moment to look through the document.
Mr. Bender, do you recognize this document?

Yes, I do.
Q What is this document?
It's the compilation of Donald J. Trump's Statements of Financial Condition as of June 30, 2017.
Q Does this appear to be the final version of the document?
Yes, it does.
MR. W LL CE: Your Honor, we ask this document be entered into evidence.
THE COURT: Granted. It's now in evidence.
Q Mr. Bender, you've been handed a document marked Plaintiff's Exhibit 754. Just take a moment to look through this document.
Do you recognize this document -- withdrawn. I'm sorry.
Q Mr. Bender, do you recognize this document?
Yes, I do.
Q What is this document?
This is the representation letter for the compilation of the personal financial statement, Statements of Financial Condition of Donald J. Trump as of June 30, 2017.
Q If we just flip to the last page. Do you recognize the signature on the left-hand side of the screen?
Yes, I do.

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Q Whose signature is that?
llen Weisselberg.
Q In what capacity is Mr. Weisselberg signing this letter?
Chief Financial Officer and Trustee of Donald J. Trump Revocable Trust.
Q The signature on the right-hand side of the page, do you recognize that signature?
Yes.
Q Whose signature is that?
That's Don, Jr.'s signature.
Q In what capacity is Mr. Trump signing this letter?
s Executive Vice President and Trustee of Donald J. Trump Revocable Trust.
Q Would Mazar's have issued a Statement of Financial Condition in-- withdrawn.
Would Mazars have issued a Statement of Financial Condition if llen Weisselberg and Donald Trump, Jr. did not make representations in this letter on behalf of the trustees in the Revocable Trust?
It would not have.
Q Would Mazars have issued 2017 Statement of Financial Condition if they learned any of the representations in this letter were not true?
No, they would not have.

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Q Mr. Bender, you've been handed a document marked as Plaintiff's Exhibit 771. I'll give you a few minutes to look through the document.
Mr. Bender, do you recognize this document?
Yes, I do.
Q What is this document?
This is the engagement letter compiling the Statements of Financial Condition of Donald J. Trump as of June 30, 2018.
Q If you take a look at the bottom of this document, do you recognize that signature?
Yes, I do.
Q Whose signature is it?
llen Weisselberg's.
Q In what capacity is Mr. Weisselberg signing this letter?
Executive Vice President of the Trump Organization and Trustee of Donald J. Trump Revocable Trust.
MR. W LL CE: We ask this document be entered into evidence.
THE COURT: Granted. It's in evidence.
Q Mr. Bender, you've been handed a document that's marked as Plaintiff's Exhibit 774. It's a pull sheet for a document that was produced as an Excel file. We've put a copy of the Excel file on the screen here.

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Do you recognize this document?
Yes, I do.
Q What is this document?
It's the Jeff Supporting Data for the Statements of Financial Condition for Donald J. Trump as of June 30, 2018.
Q The initials, again, PBC in red at the top, what do those mean?
Prepared by client.
Q We haven't seen these symbols before, but, next to number $76 million on line 12 are the letters PY. Do you know what the letters indicate?
Prior year.
Q The next cel lists the number of 76,200,000, says FS. What does that indicate?
Financial statement.
Q What is being indicated by the fact that is the financial statement?
It agrees to the financial statement.
Q So, that you've confirmed that the number that is marked there is 76,200,000 is in the final Statement of Financial Condition?
I don't like the word confirm. I'll say check, cross-reference.
Q You've cross-referenced?
Yes.

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(Whereupon, a document was displayed, and handed to the witness.)
Q Mr. Bender, you have been handed a document that is marked as Plaintiff's Exhibit 773. I'll give you a few moments to look through the document.
Mr. Bender, do you recognize this document?
Yes, I do.
Q What is it?
It's the compilation of the Donald J. Trump Statement of Financial Condition as of June 30, 2018.
Q nd does this appear to be the final version?
Yes, it does.
MR. W LL CE: Your Honor, we would ask that this document be moved into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 773 was received in evidence.)
(Whereupon, a document was displayed, and handed to the witness.)
Q Mr. Bender, you have been handed a document that has been marked Plaintiff's Exhibit 772. Have you had a chance to look at this document?
Yes, I have.
Q nd what is this document?
This is a letter of representation for the compilation

of the personal financial statement of Donald J. Trump, as of June 30, 2018.

MR. W LL CE: Your Honor, we would ask that this document be entered into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, Plaintiff's Exhibit 772 was received in evidence.)

MR. W LL CE: If we could scroll down to the bottom of the last page of this document.

Q Mr. Bender, do you recognize the signature on the left of the screen?

Yes, I do.

Q Whose signature is that?

It's llen Weisselberg.

Q nd in what capacity is Mr. Weisselberg signing this letter?

Chief Financial Officer of the Trump Organization, and Trustee of the Donald J. Trump Revocable Trust.

Q Do you recognize the signature on the right hand side of the screen?

Yes, I do.

Q Who signature is that?

It's Don, Junior's signature.

Q nd in what capacity is Mr. Trump signing this letter?

Mr. Trump. Okay. Executive Vice President of the

Trump Organization, and Trustee of the Donald J. Trump Revocable Trust.

Q Was there a confusion with Mr. Trump? Usually refers to Donald J. Trump?

It's just everybody is getting older.

Q Okay. If we go up to the top, would Mazars have issued the 2018 Statement of Financial Condition if Mr. Weisselberg and Mr. Trump did not sign this representation letter?

No, we would not have.

Q Would Mazars have issued the 2018 Statement of Financial Condition if it knew that any of the representations in this letter were false?

No, we would not have.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document marked Plaintiff's Exhibit 840. Do you recognize this document?

Yes, I do.

Q nd what is this document?

This is the engagement letter to compile the Statement of Financial Condition for Donald J. Trump, as of June 30, 2019.

Q Does this appear to be the final version of the letter?

Yes, it does.

MR. W LL CE: Your Honor, we would ask that this document be entered into evidence.

THE COURT: We move a lot faster without all those objections.

Granted. It's in evidence.

(Whereupon, Plaintiff's Exhibit 840 was received in evidence.)

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document marked as Plaintiff's Exhibit 843. It's a pull sheet for a document that was produced to us as an Excel file. We have put a copy of that Excel file up on the screen here.

Do you recognize this document?

Yes, I do.

Q nd what is this document?

This is the Jeff Supporting Data for the Statement of Financial Condition for Donald J. Trump as of June 30, 2019.

Q nd what is indicated by the red letters on the top, PBC?

Prepared by client.

Q nd does this appear to be the final supporting data spreadsheet for the 2019 Statement of Financial Condition?

Yes, it does.

MR. W LL CE: Your Honor, we would ask that this

document be entered into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, Plaintiff's Exhibit 843 was received in evidence.)

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document that's been marked Plaintiff's Exhibit 842. I'll give you a few moments to look through the document.

Mr. Bender, do you recognize this document?

Yes, I do.

Q What is this document?

This is the compilation of Donald J. Trump Statement of Financial Condition as of June 30, 2019.

Q nd this appears to be the final Statement of Financial Condition?

Yes, it does.

MR. W LL CE: Your Honor, we would ask that this document be entered into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, Plaintiff's Exhibit 842 was received in evidence.)

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a copy of the

document marked Plaintiff's Exhibit 841. I'll give you a moment.

Mr. Bender, do you recognize this document?

Yes, I do.

Q What is this document?

This is the representation letter for the compilation of the personal financial statement of Donald J. Trump, as of June 30, 2019.

Q nd if we look down at the bottom of this document, do you recognize the signature on the left hand side of the screen?

llen Weisselberg.

Q nd in what capacity is Mr. Weisselberg signing this letter?

Chief Financial Officer and Trustee of the Donald J. Trump Revocable Trust.

Q nd do you recognize the signatures on the right hand side of screen?

Yes. It's Donald Trump, Junior.

Q nd in what capacity did Donald Trump, Jr. sign this document?

Executive Vice President of the Trump Organization, and Trustee of the Donald J. Trump Revocable Trust.

Q Would Mazars have issued the 2019 Statement of Financial Condition if Mr. Weisselberg and Mr. Trump did not sign this representation letter?

No, we would not have.

Q Would Mazars have issued the 2019 Statement of Financial Condition, if it knew that any of the representations contained in this letter were false?

No, we would not have.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document that is marked Plaintiff's Exhibit 854. I'll give you a moment to look through it.

Mr. Bender, do you recognize this document?

Yes, I do.

Q What is this document?

This is the engagement letter to compile the Statement of Financial Condition for Donald J. Trump for the year ending June 30, 2020.

Q nd does this appear to be the final version of the letter?

Yes, it does.

MR. W LL CE: Your Honor, we would ask that this document be entered into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, Plaintiff's Exhibit 854 was received in evidence.)

THE COURT: If I keep saying that, my voice is

going to be as hoarse as his, eventually.

MR. W LL CE: Only a few more.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, I've handed you a document that has been marked as Plaintiff's Exhibit 857. It is a pull sheet for a document that was produced as an Excel file. We have put a copy of that Excel file up on the screen. Do you recognize this document?

Yes, I do.

Q What is this document?

It's Jeff Supporting Data for the -- for the compilation of the -- it's the Jeff Supporting Data for the Donald J. Trump compilation Statement of Financial Condition, as of June 30, 2020.

Q nd does this appear to be the final version of the spreadsheet?

Yes, it does.

MR. W LL CE: Your Honor, we would ask that this be entered into evidence.

THE COURT: Granted.

(Whereupon, Plaintiff's Exhibit 857 was received in evidence.)

Q I'll just ask, before we take it down, what do the letters PBC mean, again?

Prepared by client.

Q Thank you.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document that's been marked Plaintiff's Exhibit 856. If you can, take a moment to look through this document.

Mr. Bender do you recognize this document?

Yes, I do.

Q What is this document?

This is a compilation of Donald J. Trump Statement of Financial Condition as of June 30, 2020.

Q Does this appear to be the final form of the document?

Yes, it does.

MR. W LL CE: Your Honor, I would ask that this document be entered into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, Plaintiff's Exhibit 856 was received in evidence.)

THE COURT: nd, 10-minute warning.

MR. W LL CE: Understood.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, you have been handed a document marked Plaintiff's Exhibit 855. If you could, take a moment and look

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through the document, please.
Mr. Bender, do you recognize this document?
The document --
Q What's that?
Repeat the question, please?
Q Do you recognize this document?
Yes, I do.
Q What is this document?
This is the representation letter for the DJT -- the compilation of the personal financial statement of Donald J. Trump, as of June 30, 2020.
MR. W LL CE: If we could go to the bottom of this document.
Q Do you recognize the signature on the left hand side of the screen?
Yes, I do.
Q Whose signature is that?
It's llen Weisselberg.
Q nd in what capacity is Mr. Weisselberg signing this document?
Chief Financial Officer and Trustee of the Donald J. Trump Revocable Trust.
Q nd do you recognize the signature on the right hand side?
Yes, I do.

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Q Whose signature is that?
That's Donald J. Trump, Junior's signature.
Q nd in what capacity is he signing this document?
Executive Vice President of the Trump Organization, and Trustee of the Donald J. Trump Revocable Trust.
MR. W LL CE: Your Honor, we would ask that this document be entered into evidence?
THE COURT: Granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 855 was received in evidence.)
Q nd Mr. Bender, would Mazars have issued the 2020 Statement of Financial Condition if Mr. Weisselberg and Mr. Trump did not offer these representations?
No, we would not have.
Q Would Mazars have issued the 2020 Statement of Financial Condition if it knew that any representations contained in this letter were false?
No, we would not have.
Q Mr. Bender, did you work on Statements of Financial Condition for Mr. Trump in any later years?
No, we did not.
Q Why not?
Mazars disengaged from the Trump Organization.
Q nd did you have any involvement in the decision to disengage from the Trump engagement?

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No, I did not.
Q fter the time that you disengaged from the Trump engagement, did you have any personal contact with Donald J. Trump?
No, I did not.
Q Before seeing him in the courtroom the last two days, when was the last time you saw Donald J. Trump in person?
It was before Covid. It was December, 2019.
Q nd do you remember in what context that was?
Yes. Ms. Trump had invited by son to a Christmas party for children, to make ornaments, and I had to get some papers signed by Mr. and Ms. Trump.
Q Since that meeting, did you have any conversations with Mr. Trump?
No, I have not.
Q Did you have any conversations with Mr. Trump about the decision by Mazars to end the engagement with the Trump Organization?
No, I did not.
Q Did you have any in-person meetings with Mr. Trump about the decision by Mazars to end to the relationship with the Trump Organization?
No, I did not.
MR. W LL CE: Your Honor, we reserve our right to re-direct; or cross, if they go beyond the scope of his

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

Consider this statement a gag order forbidding all parties from posting, emailing, or speaking publicly about any members of my staff. ny failure to abide by this directive will result in serious sanctions. I hope I've been very clear.

Okay. Let's get Mr. Bender back.

MR. KISE: While we're waiting, Judge, I'll just observe, this will be better for me because I don't have to stand up and object when there's a document, since it's cross examination.

THE COURT: re we up to cross?

MR. SU REZ: Your Honor, I'll take the opportunity to introduce myself. My name is Jesus Suarez. Thank you for admitting me, pro hac vice. I practice with Mr. Kise, in Florida.

THE COURT: Of course. I remember the application.

MR. SU REZ: I don't speak as nicely as he does.

THE COURT: Well, almost nobody does, so --

MR. SU REZ: Is my mike on? Now my mike is on.

THE COURT: Is he as good in the office as he is in court?

MR. SU REZ: He is certainly as charming in the office as he is in court, but he almost never picks up lunch. I don't know what that's about.

That was a joke. Mr. Kise picks up lunch.

MR. KISE: You are forgetting all the dinners.

THE COURT: They don't laugh at mine, either, so.

(Whereupon, the witness resumed the witness stand.)

THE COURT: I'll remind the witness, as usual, that he is still under oath.

THE WITNESS: Thank you.

THE COURT: Counsel, please proceed.

CROSS EX MIN TION

BY MR. BENDER:

Q Mr. Bender, good afternoon.

Good afternoon.

Q We have met before?

Good afternoon.

THE COURT: That's a question. Have you met before?

Q We have met before. We met in pril of 2023, when I took your deposition on behalf of the defendants. Do you recall, sir?

Yes, sir.

Q Okay. Mr. Bender, you have been up here testifying for the last day about the Statements of Financial Condition of the 45th President of the United States. Is that correct?

Yes, sir.

Q nd Mr. Bender, preparing the president's Statements of Financial Condition, that was a big job; wasn't it, Mr. Bender?

It wasn't a big job. It was part of my normal engagement.

Q Part of your normal engagement, I see. In 2011 alone, the first Statement of Financial Condition that the ttorney General had you talk about, the president had over $258 million in cash, Mr. Bender. You don't think that's a significant engagement?

No, sir.

Q Okay. The president had a company with a brand value of over $10-, maybe even $20 billion, Mr. Bender. That, for you, wasn't a significant engagement?

No, sir.

Q Okay. Now, is that because you were the in-house accountant at the Trump Organization for over 30 years, Mr. Bender?

I wasn't the in-house accountant.

Q Okay. So who was?

The in-house accountant?

Q Yes.

Mr. McConney, Mr. Weisselberg. They were the in-house accountants.

Q Mr. McConney. Mr. McConney worked with you at Spahr

Lacher?

Yes, he did.

Q May have been responsible for giving you the name Doc?

He wasn't, but he kept it going.

Q Did they call you Doc because you were good at documented transactions? That was the Doc?

No.

Q It's a cute nickname.

Was Mr. Weisselberg an accountant?

He was an accountant.

Q Mr. Weisselberg is a CP ?

No. He is not a CP .

Q Mr. McConney is a CP ?

No. Mr. McConney is not a CP .

Q Okay. So who was the in-house accountant at the Trump Organization, Mr. Bender?

Mr. Weisselberg, and his team.

Q ll right. You did work for the Trump Organization for over 35 years; did you not, Mr. Bender?

Excuse me?

Q You did work for the president and his company, the Trump Organization, for over 35 years?

pproximately.

Q pproximately. In fact, you came to work with the Trump Organization through a gentlemen named Mr. Mitnick; didn't

you?
Mr. Mitnick was my boss.
Q Mr. Mitnick your boss at Spahr Lacher, where you started; right?
Yes.
Q nd ever since Spahr Lacher, more than 35 years ago, you have been doing work for the Trump Organization; have you not?
Yes, sir.
Q Now, you have been a licensed certified public accountant for over 40 years; have you not, Mr. Bender?
Yes. That would be correct, yes.
Q Over 40 years as a certified public accountant; correct?
Correct, Mr. Bender?
Yes.
Q nd as a certified public accountant, you have got responsibilities to the public; right?
I think that's fair.
Q If you put your signature on a document, that's a document that you know is going to go out to the world; is it not, Mr. Bender?
Not necessarily.
Q ll right. But as a certified public accountant, you are certainly in a position to put together financial statements

that go out to the world; right, Mr. Bender?
Out to the world. I think in some cases.
Q In some cases. In some cases. nd in fact, you not only prepared financial statements for the president, you also prepared his tax returns; did you not, Mr. Bender?
Yes, I did.
Q You prepared the tax returns of the 45th President of the United States?
Yes, sir.
Q Possibly even the 47th President of the United States Mr. Bender?
MR. W LL CE: Objection. Relevance.
THE COURT: Sustained.
Q It's a very serious thing, Mr. Bender, to have that responsibility, that level of trust, that you were the person that, for over 35 years, prepared the tax returns?
THE COURT: sked and answered. Let's move on.
Q You also prepared the tax returns of other members of the Trump family; did you not?
Yes, sir.
Q For over 35 years; did you not?
No, sir.
Q For more than 30 years?
No, sir.
Q For more than 20 years?

I can't answer that.
Q You can't answer that. You can't remember the time when you started preparing tax returns for the first lady?
The first lady?
Q The First Lady of United States, Ms. Trump?
When they got married.
Q Oh, okay. When they got married.
nd how about other members of the Trump family? Do you remember when you started preparing their tax returns?
Not off the top of my head, no.
Q Did anyone other than you prepare President Trump's tax returns in the last 30 years, Mr. Bender?
I'm not sure. I prepared them for 30 years. I would have to go back.
Q Do you have any issues with your memory, Mr. Bender?
No, sir.
Q You also prepared tax returns for other entities that are ultimately owned by President Trump; did you not?
Yes, sir.
Q Dozens of entities?
More than that.
Q More than that. How many more than that, Mr. Bender?
In a year, it could have been hundreds.
Q Hundreds. You prepared tax returns for hundreds of entities ultimately owned by Mr. Trump; did you not?

Yes, sir.
Q nd in fact, you testified at your deposition, the last time we met, that many of those flowed up into President Trump's tax returns; did you not?
Yes -- did I testify to that? I don't know if I testified to that.
Q Well, we can play the tape in a little while.
nd isn't it the case, Mr. Bender, that you were a trusted adviser to the Trump Organization?
I think that I was a trusted adviser. I would hope so.
Q That they consulted you whenever they opened a new entity?
They did consult me quite often.
Q How often is quite often, Mr. Bender.
They would usually check to see what type of entity it should be, a partnership or a corporation.
Q So they frequently consulted with you when they created a new entity?
In that regard, yes.
Q nd they frequently consulted with you as to where to put that entity in the corporate structure of the company; correct?
Yes, sir.
Q nd they also consulted with you, for example, to file

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a new entity's tax documents, to get their EIN; right?
No, sir.
Q You didn't pull the EIN numbers for new entities that were created by the Trump Organization?
Not the last 15 years or --
Q 18 years?
No.
Q Was it other members of your firm that pulled --
No. The Trump Organization --
MR. W LL CE: Can I just get an objection, your Honor? If Mr. Suarez can please let the witness finish his answer, before he starts asking his next question?
THE COURT: One at a time.
MR. SU REZ: Okay. Yes, your Honor.
The Trump Organization has been getting their own EIN numbers for a significant period of time.
Q But before that, you pulled them, or someone working at your direction?
I may not have been at that level yet. It may not have been under my supervision.
Q Now, the Trump Organization was with you as a client when you were at Spahr Lacher; is that correct.
Yes, sir.
Q nd they were with you when you moved over to the Weiser's firm; is that not correct?

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Yes, sir.
Q nd in fact, President Trump and the Trump Organization were loyal clients of yours; were they not?
I hope so.
Q In fact, they were so loyal to you, Mr. Bender, that in 2004, when the Securities and Exchange Commission censured Weiser, the Trump Organization let you keep their business; did they not?
I have no knowledge about that.
Q You have no knowledge of the Securities and Exchange Commission censuring Weiser in 2004?
I know there was something at one point. I don't remember when it was.
Q Do you recall that the SEC called Weiser's conduct highly unreasonable?
I have no knowledge of that.
Q Do you recall if the SEC called Weiser's conduct improper professional conduct?
I have no knowledge of that.
Q Do you recall if a gentlemen named Victor Wahba, at the time when he was at Weiser's, was also censured by the SEC?
I don't remember exactly.
Q Who is Victor Wahba?
He is the Chairman of Mazars.
Q Mazars?

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Yes. Mazars U.S. .
Q nd that's the accounting firm that you retired from recently; correct?
Yes, sir.
Q Okay. nd you later became a partner at Mazars; did you not?
When the firm merged in. Yes, I did.
Q nd the Trump Organization and President Trump had confidence in you to continue handling their business; did they not?
When we merged?
Q Yes.
I was not a partner in Mazars at that point.
Q When President Trump's business went to Mazars, you were no longer the partner in charge of his business?
Say that again?
Q When President Trump transferred his business to the Mazars firm, you were no longer the partner in charge of his business?
I was not the partner in charge at the time of the merger, no.
Q Who was the partner in charge?
Jerry Rosenblum.
Q Mr. Wilson was the partner in charge of the relationship with the Trump Organization?

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Rosenblum.
Q Rosenblum?
Yes.
Q Okay.
May he rest in piece.
THE COURT: I don't know how we got from Wilson to Rosenblum.
MR. SU REZ: My hearing.
Q When Weiser merged into Mazars, you continued to handle work for the Trump Organization; did you not?
I continued to be on the account, yes.
Q Okay. nd as you testified today and yesterday, you were one of the parties that signed the Statements of Financial Condition compilation reports every year; were you not?
For a number of years, yes.
Q Okay. ccording to your testimony from at least 2011 to 2020, was that not the case?
Yes. That's the case.
Q nd during that period of time, President Trump's business was at least half of your billable work at the firm; was it not?
Close to it, I would say.
Q Close to it. He was your single biggest client, in fact?
Yes.

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Q nd companies controlled by Mr. Trump were your single biggest client?
Yes.
Q nd the Trump Organization and President Trump, they paid you a lot of money; didn't they, Mr. Bender?
It was a significant amount.
Q In some years it was more than a million dollars?
Yes.
Q In some years it was more than $2 million?
I can't specifically allocate it, but it's possible.
Q In fact, in 2015, the Trump Organization and related entities paid Mazars over $2.1 million; did they not?
I don't know, off the top of my head.
(Continued on the next page.)

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Q In 2016, they paid Mazars over a million and a half dollars; did they not?
I couldn't tell you.
Q Could you tell me, off the top of your head, if in 2017 the Trump Organization paid Mazars more than $1.7 million?
No, I could not.
Q Does that figure seem right?
I couldn't answer it off the top of my head.
Q In 2018 are you aware the Trump Organization paid Mazars over $1.6 million?
I counts answer that.
Q In 2019 the last year you signed the compilation report, the Trump Organization paid Mazars more than $2.4 million?
I don't think 2019 was the last compilation report but I could be wrong.
Q In fact in 2019, they paid you more than 72 percent of the fees that you originated that year at Mazars?
I couldn't answer that.
Q In all that time, Mr. Bender, I trust that you followed your professional responsibilities as a CP when you performed work for the President; did you not?
Yes, sir.
Q nd in all that time, I can assume, Mr. Bender, that

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you adhered to the professional standards promulgated by the merican Institute of Certified Public ccountants when you did your work, Mr. Bender; is that not correct?
I tried.
Q s a matter of fact, you were familiar with those standards when you prepared the compilation reports, the Statements of Financial Condition; were you not?
No.
Q Why wasn't the case then, Mr. Bender, that when I asked you whether the Statements of Financial Condition were prepared in accordance with SC 274 and I asked you what SC 274 was, you said, not off the top of my head?
MR. W LL CE: Objection.
THE COURT: Can I have a read back? It was sort of a compound question. Read back?
MR. SU REZ: I can withdraw.
Q The accounting-- excuse me. The compilations for the Statements of Financial Condition were prepared in accordance with SC 274; were they not.
Yes, they were.
Q You're familiar with SC 274, correct?
I'm not an expert on it. I have some general knowledge.
Q You have some general knowledge of SC 274; is that correct?

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Yes.
Q But you're not an expert?
I'm lucky enough to be in a firm where the guy next door to me was an expert on this stuff. So, I had a lot of subject matter specialists. We were a large firm and I could always pull resources when needed.
Q Did you, in fact, pull resources when you were working on the President's Statement of Financial Condition?
When needed, yes.
Q Did you conduct-- excuse me. Did you consult with subject matter experts?
I consulted with quality control or subject matter specialists when I felt I needed help, yes.
Q What was the name of the person that you consulted with in connection with preparing the President's Statements of Financial Condition?
It would be different people in different years.
Q Okay. Who did you consult within 2020?
I couldn't answer that off the top of my head.
Q Who did you consult with in 2019?
I couldn't answer that.
Q Who did you consult with in 2017?
It would be-- these people were the quality control people assigned to the engagement.
Q What were their names?

I'd have to check the-- each individual year.
Q You can't answer the question?
For any individual year, no, I can't.
Q Who did you consult with in 2016?
Off the top of my head, I couldn't answer that question.
Q Who did you consult with in 2015?
Without my work papers, I couldn't answer that.
Q Who did you consult with in 2014?
I couldn't answer that off the top of my head.
Q Who did you consult with in 2013?
I can't answer that off the top of my head.
Q Who did you consult with in 2013?
I can't answer that off the top of my head.
Q Who did you consult with in 2011?
I can't say that off the top of my head.
Q When you were preparing the-- excuse me. When you were preparing a compilation report for the Statements of Financial Condition for the President of the United States of merica, you can't remember who you consulted with in preparing that compilation report?
That's why binders have sign-off. If I save the sign-off, I can see who the QC person was in any of the reports we prepared.
Q How many compilation reports for Statement of

Financial Condition did you prepare in 2017?
I couldn't answer that off the top of my head.
Q Did you prepare a compilation report for a Statement of Financial Condition for any one other than President Trump in 2017?
I don't know, off the top of my head.
Q Did you prepare a compilation report for anyone other than President Trump for a Statements of Financial Condition in 2018?
I couldn't answer that off the top of my head.
Q Did you prepare a compilation report to a Statement of Financial Condition for anyone other than President Trump in 2019?
I couldn't answer that off the top of my head.
Q Did you prepare a compilation report for anyone other than President Trump for a Statement of Financial Condition in 2020?
I couldn't answer that off the top of my head.
Q In 2020, when President Trump was the leader of the free world and you were preparing the compilation report to his Statement of Financial Condition, you can't remember who you spoke with, or if you prepared a Statements of Financial Condition compilation report for anyone else? That's correct?
No. 2020 is that the last compilation report we did?

Q I don't know, Mr. Bender. You did the compilation report.
I need to confirm that would be the last one.
Q Okay. In 2021, did you compile the President's Statement of Financial Condition in 2021?
I do not believe so. I wouldn't know who we consulted with in 2020.
Q In 2020, when you prepared President Trump's Statement of Financial Condition or-- excuse me. The compilation report to President Trump's Statement of Financial Condition, what authoritative literature did you review?
I know we had the subject matter specialist and we discussed the -- any issues that were out there.
Q My question was a little bit different. My question was: What literature did you review, in connection with preparing the compilation report to the Statement of Financial Condition, for the leader of the free world?
We have required check lists and I went through the required check lists that's required by Mazars.
Q Did you check any ICP guidelines?
I do not recall.
Q Did you check any notes or commentary for the accounting standards?
I do not recall.
Q Did you read any literature concerning the applicable

accounting standards?
I'm sure I did but I don't recall.
Q During all this time, you held yourself out to President Trump as someone who could ably compile the Statement of Financial Condition?
Yes, sir.
Q Was that an accurate representation you made?
bsolutely.
Q Despite the fact that you just hold yourself out as a generalist?
s I said before, I had a lot of resources in the firm. partner who I worked with wrote SS RS 1 and 2. He wrote SS RS. He was in an office next store to me and always available to me.
Q What is his name?
ndrew Cohen.
Q Did you consult, in connection with preparing the compilation report for the President's Statement of Financial Condition in 2020?
Yes, I did.
Q What did you consult him about?
He was involved in the numerous aspects of the compilation.
Q Which ones?
Which topics?

Q Yes.
Off the top of my head, he was involved with the valuation of the property of 57th Street.
Q What was he valuating?
He was involved with the method of discussions with the clients.
Q Excuse me?
He was involved with discussions with clients on the method of valuation.
Q What was discussed?
t that point, the Nike lease was not renewed and they were valuing it as being renewed and there were discussions.
Q How was that documented?
I don't know if it was specifically documented.
Q nything else?
There were other things, but, I can't recall.
Q How about in 2019?
I can't tell you who I spoke to in 2019.
Q I think earlier you told me you were consulted regularly by members of the Trump Organization and financial accounting members; is that not the case?
They would call me with their questions.
Q When they called you with questions, I presume you provided answers?

Or I'd bring somebody in to help me when I couldn't
Q Who did you bring in to help you?
Numerous people over the years.
Q Who?
I can give you 20 or 30 names.
Q Give me one.
ndy Cohen.
Q What did you bring him in on?
He would discuss financial statement matters with me and them.
Q ndy Cohen would discuss with you matters relating to President Trump's Statement of Financial Condition; is that correct?
From time to time.
Q How often?
I couldn't answer that off the top of my head.
Q When The Trump Organization called and they had questions about accounting transactions, you'd answer them, correct?
If I could.
Q nd, in fact, many times they consulted you before even engaging in transactions; did they not?
Sometimes.
Q They would run transactions by you and ask you to help them understand certain loan terms?

I don't know about that.
Q They would give you an opportunity to review loan agreements before they entered into them?
Many years ago, they might have. Certain paragraphs.
Q Certain paragraphs?
Yes.
Q They wouldn't send you loan agreements and ask you, hey, Mr. Bender, can you review these for us and let us know if this is something we can enter into?
I don't think they sent full agreements. I do remember them sending certain paragraphs from time to time.
Q Do you remember reviewing loan agreements and seeing whether the Trump Organization could comply with certain covenants?
Reviewing them before the loan documents were signed?
Q Yes.
I do not recall at this moment.
Q Can you recall reviewing loan agreements after they were entered into and giving advice as to whether certain loan covenants could be complied with?
I don't think they advised. They did, sometimes as an order, get a loan covenant.
Q Provide calculations?

I don't know if we provided the calculations or they provided the calculations, but, we had discussions at certain times.
Q So, they could have provided the calculations, if you told them it was correct or not?
No, we would have audited.
Q So, you did audit work for the Trump Organization?
I did for a number of entities.
Q For which entries did you perform audit work for the Trump Organization, Mr. Bender?
It varied over the years, but, it would have included Trump Tower Commercial, or its predecessor. In early years, Trump Fifth venue. It would have been 40 Wall Street, LLC for certain years, not all years.
Let's take that back. There was certiorari work also and it would have been 57th Street Management for a number of years. I'm sorry. 57th Street ssociates LLC.
There would have been, I think, a couple of years, 41 Wabash-- 401 and there might have been certiorari work of certain properties, audit of certiorari work. I couldn't tell you which companies, off the top of my head.
Q In fact, you did audit work for Trump Post Office, LLC --
Yes, I did.
Q --a defendant in this case. You performed audits of

another defendant in this case, 40 Wall Street, LLC; did you not?
Certain years yes.
Q In other years, you performed reviews?
Yes, sir.
Q You performed compilations. Is that the case?
To the best of my recollection, we did some compilations of operating escalations.
Q You performed audits for the Trump International Hotel and Tower, LLC; is that not the case?
Trump International Hotel and Tower, LLC?
Q TIHT?
Okay. Okay, that's different. Yes.
Q You're familiar with the acronym?
Excuse me?
Q You're familiar with the acronym?
Yes.
Q You performed audits of 57th Street ssociates, LLC?
For a number of years.
Q You performed both audits and compilations of another defendant in this case 401 North Wabash, LLC?
Yes, we did.
Q You also performed compilations for another defendant in this case, Trump Endeavor 12, LLC; did you not?
Yes.

Q What did Trump Endeavor, LLC own?
The Doral Hotel and Golf Course in Florida.
Q Mr. Bender, you frequently visited the Trump Organization properties?
Pre-COVID, a few times a year.
Q Pre-COVID?
Yes.
Q Those are the suite of offices at Trump Tower on Fifth venue; is that correct?
Yes.
Q Did you visit any other Trump properties over the years?
Yes.
Q Which ones?
I went once to Trump Chicago for a tax exam. I went to -- what else? I went to Trump National Golf Course. That was for charity events. I went to Lamington Farms a couple of times for a tax-- a sales tax exam. I went to Trump International Hotel and Tower ssociation. I was on site there.
I guess you could say I was at the Nike building because it's connected to Trump Tower. I was at Old Post Office a number of times. That's all I can think of off the top of my head.
Q ny other properties you can recall visiting?

That's all I can recall right this second.
Q What was the purpose of visiting these properties?
Sometimes I did work. Sometimes I did Post Office. I stayed there. I was there for the opening of Old Post Office.
Q Old Post Office is the hotel on Pennsylvania venue?
Yes, sir.
Q You were there on the opening of the Old Post Office Hotel on Pennsylvania venue?
Yes.
Q For what purpose were you there?
The Trump Organization invited me to go.
Q You were a guest of the Trump Organization?
For that night, yes.
Q In fact, you enjoyed a very close working relationship with the Trump Organization; did you not?
Close? We got along.
Q You got along. Who were your principal points of contact? Were they not Jeff McConney and llen Weisselberg?
I'd say more Jeff than llen.
Q What is Mr. McConney's title?
It changed over the years. I believe, originally he was assistant comptroller then he became comptroller then he hit different levels of vice president. I don't know what was the prefix to his vice president was.

Q You and Mr. McConney were close friends at one point; were you not?
We didn't have a relationship outside of work but we got along well.
Q You got along well?
I had tremendous respect for him. He is a very good accountant.
Q Mr. McConney went to your wedding?
Yes, he did.
Q How many people were at the wedding?
Eighty-five
Q Mr. McConney was one of 85 people at your wedding. You went to Mr. McConney's son's bris; did you not?
When he was at Spahr Lacher, yes.
Q How many people were at Mr. McConney's son's bris?
I couldn't answer that.
Q Okay. In fact, you enjoyed socializing with members of the Trump Organization whenever you got the chance, Mr. Bender; did you not?
I didn't really socialize too often, no.
Q Did you go to President Trump's wedding, Mr. Bender?
Yes.
Q You weren't a stranger to the Trump Organization, were you?
No, sir.

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

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

Q You were supplied general ledgers for each entity you were tasked with preparing taxes for?
Not each entity had a general ledger.
Q To the extent, certainly, that an entity had a general ledger, it was provided for you in connection with preparing tax returns?
Yes, sir.
Q Because you need a general ledger to prepare a tax return; do you not?
I think if the company has a general ledger, generally, you need a general ledger to prepare a tax return.
Q In the last 25 years that you worked with the Trump Organization, there wasn't any other accounting firm that was involved with preparing a Statement of Financial Condition compilation report, was there?
There was. I don't know what year it was but rthur nderson was doing it for a number of years. I couldn't tell you what year.
Q Certainly, not between 2011 and 2020, right, Mr. Bender?
No, sir.
Q During that period of time, was there any other accounting firm that worked with you on preparing President Trump's tax returns?
There were other firms that did tax returns for

Mr. Trump.
Q Which firms were those?
McGladry or whatever they were called after they merged. There was a firm in California called Ludlow. Something like that. I don't know. firm that did-- DH Properties Corp. in California. They had a number of firms that did golf courses over a number of years before we took them over.
lot of them were McGladry over the years before we took them over and McGladry continued to do Mar-a-Lago. There was a gentleman who did some returns over the years, Matthew Dapolito and, obviously, some of the larger companies in the olden days. I don't remember timeframe. rthur nderson did some returns, and, Ian Wise did returns in the old days.
Q From 2011 to 2020, did anyone, other than Mazars, prepare President Trump's tax returns?
Entity returns?
Q President Trump's tax returns?
His personal returns?
Q His personal returns.
No. His personal income tax returns were prepared by Mazars or its predecessor.
Q They were prepared by you at Mazars?
2020 yes, sir.

Q They weren't prepared by anyone else?
They were prepared-- I was the paid preparer.
Q Paid preparer means you're the one that appears on the tax return?
I sign it. I signed the returns.
Q Certainly, in order to sign the tax returns of an individual in 2011 who had $258 million in cash, you had to become intimately familiar with his financial condition; did you not?
I understood the corporate entity structure of the Trump Organization to a very strong extent.
Q You were familiar with its operations?
To a significant extent.
Q nd you were familiar with the properties that President Trump owned through a number of different entities; were you not?
Most of them, yes.

(Continued on the following page..)

Q You understood what 40 Wall Street was; correct?
Yes, sir.
Q nd Trump Old Post Office; correct?
Yes.
Q nd Trump Tower; correct?
If you are talking about Trump Tower Commercial, yes.
Q nd the Doral resort in Miami?
I had less of a knowledge of that property, but I knew what it did.
Q You generally understood that it was more than one square mile in the middle of downtown Miami; correct?
I didn't know the size of it.
Q Have you ever been to the Trump Doral?
No, sir.
Q Did you do anything to become familiar the Trump Doral, in preparation to preparing your compilation report?
I was involved in the earlier years, and later years, the other partners took over.
Q What partners took over, in the later years?
Jennifer Safran.
Q nd when was that?
I would have to guess. I'm not exactly sure.
Q Mr. Bender, would it surprise you that you participated in over 115 test engagements for the Trump Organization?

In what period?
Q In your career, Mr. Bender.
115? No that would not surprise me.
Q Would it surprise you if it was higher?
No. It would not surprise me.
Q Would it surprise you if there were over 11,000 discrete engagements, over the broad number of entities, in the time that you worked with the Trump Organization, that you were a party to?
It might be high. I don't know. That might surprise me.
Q It might be high?
Yes.
Q But it doesn't sound like it's too many; does it?
I can't answer that.
Q Does that sound too high?
I can't answer if that --
Q It might have been 10,000?
I can't answer that.
Q 9,000?
I couldn't quantify it.
Q You couldn't quantify it. You did so many engagements for the Trump Organization for the 30- plus years that you worked for them, that you couldn't even quantify it.
I just don't remember how many engagements were

around, in the earlier years.
Q Do you have any other clients you did that many engagements for?
No, sir.
Q Did you ever work with any other individuals that possessed President Trump's net wealth -- net worth?
I don't know if some clients what -- I don't know what my other clients' net worth is.
Q You don't know what your other client's net worth is?
Yes.
MR. SU REZ: Let's take a look at the Statement of Financial Condition, previously marked PX 756.
(Whereupon, a document was displayed, and handed to the witness.)
Q You previously identified this as President Trump's Statement of Financial Condition for the year ending June 30, 2016?
The compilation. Yes, sir.
MR. SU REZ: nd can we please turn to the next page?
Q This is your independent accountant compilation report; is it not?
Yes, sir.
Q nd see, down there, where it says, Mazars US , LLP? That's your signature?

That is either my signature, or an electronic copy thereof.
Q Okay. nd that's your letterhead down there, Mazars US , 60 Crossways Park Drive, in Woodbury, New York?
Yes.
MR. SU REZ: Can we turn to the next page of this document? I think we skipped one. Come back. Next page.
Q ll right. The first page is the cover, then you have your independent accountant's compilation report. Is that correct?
Yes, sir.
MR. SU REZ: nd then, turn it over.
Q You have got the Statement of Financial Condition of Donald J. Trump.
That's the asset page.
Q nd then there's reference there to the independent accountant's compilation report. Do you see that?
Yes, sir.
Q ll right. nd then, in the bottom it says, "The accompanying notes are an integral part of this financial statement."
Yes, sir.
MR. SU REZ: Turn it over. Next page, please.
Q Then the following sheet are the liabilities and net worth. Do you see that?

Yes, sir.
Q nd you see there it says that there's a loan related to 40 Wall Street; do you not?
Yes, sir.
Q You see it?
Yes, sir.
Q nd there's a loan related to Trump Park venue?
Yes, sir.
Q nd then there are other loans there related to the Trump International Hotel and Tower, and the Old Post Office?
Yes, sir.
Q In preparing the Statement of Financial Condition, you would have done work to familiarize yourself with the loans that are on this document?
The Trump Organization would have supplied us a loan statement for those individual loans, in most years.
Q loan statement. nd what would that loan statement contain, Mr. Bender?
The loan balance as of the date of the --
Q Okay --
MR. SU REZ: Let's zoom back out, and keep going.
Q nd here it's got the notes for the Statement of Financial Condition, and again, a reference to the independent accountant's compilation report. That's your report; correct, Mr. Bender?

Yes, sir.
MR. SU REZ: Now, keep going all the way to the end of the document. This is the second to last page. Flip it over. Keep going, to the end of the document.
Q nd this would be the back page of the document; correct?
That would be the back cover.
Q The back cover of this document. So, this document would be presented from front cover to back cover?
Yes.
Q nd the back cover, it's got -- what does it say down there? Www.weisermazers.com?
Yes, sir.
Q So it's presented as a single document with the front and the back page?
So, I can't speak for this individual year. In the older days, they were bound statements, and they would be bound. There would be a cover and a cover, and there would be the white pages that you have just shown me, would be in between. In later years, I don't know. In 2016, they may only have been PDF-ed.
Q Now, so this would all be bound, in other words? In the earlier years.
Q nd in the later years, when it was an electronic document like this one that you identified previously, it would

start with the WeiserMazars logo on its front page, it would have your compliation report, it would go through the financial statement and the notes, and then it would have this page; correct.
I can't speak to the fact that they might have gotten hard copies in those years.
Q But the digital copy -- you would agree with me that this is a true and correct copy of the documents; correct? I think that's what you testified to earlier?
Yes.
Q Yes it starts with a Mazars page, and ends with a Mazars page?
Starts with a cover, the bound the cover. The cover, the statement, and it ends with a cover of the statement.
Q The documents all travel together. ll the pages in this document travel together.
Yes.
Q Nothing is missing?
No, sir.
Q Let's take a look at engagement letter for this Statement of Financial Condition, which was PX 74 -- excuse me. PX 740. Yes.
MR. SU REZ: Can we put those up next to each other?
(Whereupon, a document was displayed, and handed

to the witness.)
Q Who drafted this engagement letter?
member of -- some staff member at Mazars.
Q staff member at Mazars, working at your direction?
I was the ultimate person responsible.
Q You signed the statement, not a staff member at Mazars; right?
That's correct.
Q The compilation report, you prepared it?
I did not prepare it. It was a compilation. Mazars compiled it.
Q You compiled the compilation report. You wrote the compilation report, and you signed it?
I did not write the compilation report. I signed the compilation report.
Q Who wrote the compilation report?
I couldn't tell you who wrote it that year. It could have come from the client. Even they may have marked it up. I couldn't answer that, right now.
Q Let's take those two statements that you just made apart. It could have come from the client?
We would have written a compilation report. I don't know if they sent us a copy of it, also.
Q So who wrote the compilation report? Was it you or the client?

Mazars wrote the compilation report.
Q Mazars wrote the compilation report, but who is the human being at Mazars responsible for writing the compilation report on June 30, 2016?
I had the ultimate responsibility.
Q You had the ultimate responsibility. nd how about in connection with the engagement letter? It might have been prepared by one of your staff members, but you had the ultimate responsibility for preparing that engagement letter; correct?
Yes. Yes, sir.
Q Okay. nd let's take a look at that engagement letter. That engagement letter says, in the second page, right there in the middle of the second page it says, "Our report will include the following. Because of the significance and pervasiveness of the matters discussed above --"
Excuse me. Let me repeat that.
"Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the Statements of Financial Condition, users of this personal financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised Statement of Financial Condition prepared in conformity with the accounting principles generally accepted in the United States of merica."
Do you see that?

Yes, sir. I do.
Q Who wrote those words?
I was responsible for them being, in 2017.
Q You prepared that engagement letter?
Yes.
Q Before you even started compiling the compilation report, producing the compilation report, you had already determined that this disclaimer would be there; had you not?
Yes, we had.
Q Okay. So before you got the first bit of information in connection with the June, 2016 compilation report in the Statement of Financial Condition, you had already decided to put in there a statement that the financial statement should not be relied on in accordance with that disclosure statement; had you not?
MR. W LL CE: Objection.
THE COURT: What's the ground of the objection?
MR. W LL CE: I don't think he has accurately stated what's on the screen.
THE COURT: Do you want to try to rephrase it, just to be exactly congruent with what's on the screen?
Q Before you even began working on the engagement, you had already determined that the compilation report had to include that disclaimer?
Due to the fact that the top paragraph had so many

G. . .P. exceptions, we had determined that we would need to put that paragraph.
Q Due to the fact that it had so many G. . .P. exceptions. Let's talk about the G. . .P. exceptions. You just described them as, so many G. . .P. exceptions. Is the Trump Organization required to comply with G. . .P.?
Even the G. . .P. exceptions aren't complying with G. . .P. You are notifying them. So, everybody is required, to a certain extent, to comply with G. . .P.
Q That wasn't my question, Mr. Bender. My question was, is there anything that required the Trump Organization to maintain their books in accordance with G. . .P., as a private company?
To maintain their books as a private company?
Q G. . .P.
No.
Q private company doesn't have to follow G. . .P.; correct?
THE COURT: It probably depends on -- and I'm not an accountant -- what they're using it for. If they are using it for external reasons, or internal reasons. So, I'm just asking you to be more specific.
MR. SU REZ: I will be mindful of that.
Q But there's nothing that requires a private company to follow G. . .P.?

No. private company is not required to follow G. . .P.

Q private company is not required to follow G. . .P., but it can choose to; correct?

Yes.

Q Let's go to the statement above. " ccounting principles generally accepted in the United States of merica require that personal financial statements include a provision for current income taxes, as well as estimated income taxes, on the differences between estimated current values --"

Excuse me. Let me start that again.

" ccounting principles generally accepted in the United States of merica require that personal financial statements include a provision for current income taxes, as well as estimated income taxes, on the difference between estimated current values of assets, and the estimated current amounts of liabilities, and their tax bases, present cash, marketable securities, and hedge funds, separately, include amounts to be received in the future from estimated current values that are non-forfeitable, fixed and determinate, and do not require any future services.

"Record the net --"

Excuse me.

"Record the current estimated value of all closely-held and other business entities, as a net investment,"

open parentheses, "assets net of liabilities, and disclose summarized financial information about each entity. Record non-interest-bearing deposits in exchange for rights or privileges, and include all assets and liabilities of the individual whose financial statements are presented."

I think I roughly got that right.

I think you did, too.

Q Okay. Thank you.

"The accompanying Statement of Financial Condition does not reflect the above-noted items. The affects of these departures from accounting principles, generally accepted in the United States of merica, have not been determined."

Correct?

Yes, sir. That's what it says.

Q ll right. So, in the first paragraph, you have identified about a half a dozen ways in which these Statements of Financial Condition do not comport to G. . .P.; correct?

Yes, sir.

Q Who made the determination as to which departures from G. . .P. were applicable?

The Trump Organization.

Q Who, at the Trump Organization, made that determination?

Mr. Weisselberg, when he signed the engagement letter.

Q Mr. Weisselberg is not a CP ; is he?

No, he is not.

Q Mr. McConney is not a CP ; is he?

No, he is not.

Q How would Mr. Weisselberg and Mr. McConney know what G. . .P. exceptions should have been disclosed or not disclosed in a Statement of Financial Condition?

Mr. Weisselberg did not want these amounts included in the financial statement, and there would have to be a G. . .P. exception. Jeff McConney, as you said earlier, was a practicing accountant at our predecessor firm. Very experienced, and he, as I have said many times, he is one the best accountants I ever met.

Q But you are the certified public accountant, Mr. Bender?

Yes, sir.

Q You are the one that the Trump Organization turned to to determine what was a G. . .P. exception and what wasn't; weren't you?

No. They knew what they were signing, when they signed their engagement letter.

Q Okay. The engagement letter that you prepared, that you drafted?

Yes.

Q Okay. They knew what they were signing. nd who advised them as to what they were signing on this engagement

letter, as it related to departures from G. . .P.?

They read their engagement letters, and they came to us with questions, if they had questions.

Q They had questions. nd did you tell them that there were other G. . .P. exceptions that weren't disclosed in this statement?

Not that I recall, at this moment.

Q You were aware, with the financial statements of the Trump Organization; were you not?

Yes, sir.

Q Okay. nd you were very familiar with the books and records. You prepared tax return for hundreds of entities; did you not?

Yes, I was.

Q You closed their ledgers every year; did you not?

I gave them trial balances. I did not close their books.

Q You were paid over a million dollars a year from the period of 2011 to 2020, and in some instances more than $2 million a year to provide accounting services for the Trump Organization?

That sounds possible.

Q That sounds possible. nd you were the only certified public accountant that was involved in any of this; were you not, Mr. Bender?

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MR. W LL CE: Objection, your Honor. " ny of this," is unclear.
THE COURT: Thank you.
Sustained.
Q You were the only certified public accountant that was involved in determining which exceptions to G. . .P. existed.
MR. W LL CE: Objection, your Honor. That wasn't his testimony.
THE COURT: I'm sorry. Say again?
MR. W LL CE: I'm saying that determining which exceptions to G. . .P. existed was not Mr. Bender's testimony.
Q You were the only certified public accountant that was involved in 2016 in connection with the presentation of this engagement letter in determining which exceptions to G. . .P. existed?
MR. W LL CE: Same objection.
THE COURT: Overruled.
I did not determine the G. . .P. exceptions. The Trump Organizations determined the G. . .P. --
Q The Trump Organization determined the G. . .P. exceptions, is your testimony, Mr. Bender?
Yes.
Q Mr. Weisselberg? Is he the one who determined the G. . .P. exceptions?

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He is the ultimate one responsible.
Q Not my question. I didn't ask who is responsible. I asked who determined what G. . .P. exceptions applied?
The Trump Organization.
Q What individual? The Trump Organization, we agree, is a corporate entity. It doesn't make determinations. It acts through people; right?
Excuse me?
Q Trump Organization acts through people. Companies don't make decisions.
THE COURT: I'll take judicial notice that corporations and businesses generally have to act through their personnel.
Q So, who was the person at the Trump Organization that determined what departures from G. . .P. were appropriate to list in the Statements of Financial Condition?
Ultimately, Mr. Weisselberg.
Q Ultimately, Mr. Weisselberg. nd who did Mr. Weisselberg consult with?
You would have to ask him that.
Q Did Mr. Weisselberg consult with you?
On certain G. . .P. exceptions, he might have.
Q Because you were a CP ?
You would have to ask him. That's the reason he consulted with me.

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Q You are a CP ?
Yes, sir.
Q You were a CP when you prepared this?
Yes, sir.
Q Mr. Weisselberg was not a CP ?
No, sir.
Q So, when you and Mr. Weisselberg had a discussion about what departures from G. . .P. existed, you had the knowledge of a certified public accountant that Mr. Weisselberg did not?
He had the knowledge of speaking to us, if he had any questions.
Q nd did you ever advise Mr. Weisselberg that there were any other disclosure that should have been included as departures from G. . .P.?
Some of these ones, we did suggest to him.
Q You did? Which ones?
We had discussions on, as I think I stated yesterday, about the G. . .P. exception for cash and marketable securities. When he made that change to the financial statement, we agreed it would have to be a G. . .P. exception.
Q You agreed that it was a G. . .P. exception?
Yes, I did.
Q You recommended that it should be a G. . .P. exception?

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I don't know if we recommended it. It could have been prepared, they prepared the statement without a G. . .P. exception.
Q It was changed to your satisfaction; was it not?
The -- what was changed to my satisfaction?
Q The manner in which they presented it.
With the G. . .P. exception, it met the -- it was appropriate.
Q So, you suggested, to Mr. Weisselberg, a G. . .P. exception, and it was accepted, and it was incorporated in the Statement of Financial Conditions?
That's not what I'm saying. I'm saying, based on discussions we would have had with them, we told them we agreed that this G. . .P. exception would be required, if they wanted the financial statement presented the way they had drafted it.
Q nd they agreed?
They agreed.
Q On your advice?
Not on our advice.
Q Not your advice.
They --
Q -- independently, that's your testimony?
They determined that.
Q Okay.
They drafted the financial statement, and one of those

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wanted at the time -- there was a discussion --
MR. W LL CE: I would just like to note my objection, that if he could let the witness answer the questions before he starts the next question, we would appreciate it.
THE COURT: That is the proper way to proceed.
MR. SU REZ: I will try. I will do.
Q In fact, when you suggested other changes to the Trump Organization, when you had discussions about things that you believed were appropriate, they generally heeded your advice?
I didn't suggest changes, but there was one other change that they -- they wanted -- they did, in the preparation of their financial statements that I recall, that would have required a G. . .P. exception, and there was a discussion about it.
Q There was a discussion about it?
Yes.
Q So, when you raised an issue with the Trump Organization's compliance with G. . .P., there was a discussion about it?
We talked to them about the G. . .P. exception. Yes, sir.
Q nd it was resolved to your satisfaction?
It was resolved to my satisfaction.
Q In fact, I believe yesterday you testified that

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whenever you resolved a G. . .P. exception, whenever you raised a G. . .P. exception to the Trump Organization, it was general resolved to your satisfaction; was it not?
I only recall these two G. . .P. exceptions, at this point, that I ever had discussions with them.
Q You brought up G. . .P. exceptions yesterday, that you had a conversation with the Trump Organization about, and they were resolved to your satisfaction?
They agreed that the G. . .P. exception would have to be shown in the independent compilation report, and to the notes to the financial statement.
Q Because if you would have -- I'm sorry. If it wouldn't have been resolved your satisfaction, you would have been required to withdraw?
We. Would not have issued a financial statement, if it was not resolved.
Q But you did, because the concerns that you raised were resolved, to your satisfaction?
Yes, sir.
Q Okay.
MR. SU REZ: Let's bring up the management representation letter from that same year, previously marked plaintiff's Exhibit 741.
(Whereupon, a document was displayed, and handed to the witness.)

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Q Mr. Bender, who drafted this letter?
Mazars.
Q Mazars prepared the management representation letter that's here on the screen?
We drafted it. Yes, sir.
Q Okay. nd you drafted it, because this is something that you wanted; correct?
Yes, sir.
Q You wanted this piece of paper?
Yes, sir.
Q nd you are the one that put the words on the page here; correct?
member of Mazars. Yes.
Q member of Mazars. nd that would be a member of Mazars working under your supervision; would it not be?
Yes.
Q nd that member of Mazars working under your supervision, in the year 2017, would have typed out this letter?
Somebody in typing would have typed it. Yes.
Q nd it would have been sent over to the Trump Organization?
Yes.
Q nd you would have asked the Trump Organization to sign it?
They would have reviewed it. If they had questions,

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they would have come back to us, and we would have discussed any issues on the draft that would be necessary, and if there was a change, we would discuss it.
Q Does this management representation letter that was prepared at your direction contain the word appraisal anywhere in it?
I would have to read the whole letter.
Q Please read it. It was prepared at your direction.
THE COURT: Is there some way to short circuit him reading three pages?
MR. SU REZ: They're his words, your Honor, and I'm asking -- I know --
Q The word appraisal, I don't believe, appears anywhere here, Mr. Bender; does it?
I have to read the letter.
THE COURT: Does anybody think that the word appraisal appears in this letter?
Let's assume it doesn't.
Mr. Bender, are you comfortable with that?
THE WITNESS: I'm comfortable, your Honor.
THE COURT: We want you to be comfortable.
Q Nowhere in this letter does the Trump Organization warrant to you that it's given you every appraisal that they have.
In item three, "We have made available to you all

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financial records and related data, and any additional information you requested from us, for the purpose of this compilation."

Q Okay.

"We have not knowingly withheld from you any financial record or related data that, in our judgment, would be relevant to your compilation."

Q It doesn't say they have given you appraisals.

It says they made available to us, " ll financial records and related data, for the purpose of compilation. We have not knowingly withheld any financial records."

In my opinion, that includes appraisals.

Q That, in your opinion, includes appraisals. You wrote this letter. Why didn't you use the word, appraisals?

This is pretty much standard language.

Q It's standard language. nd this letter was signed by?

llen Weisselberg and Donald Trump, Jr.

Q Neither of which is a CP ?

No, sir.

Q So they should have inferred, from the language that you wrote, in the letter that you wrote and sent to them, and asked them to sign, that that included that you wanted to see appraisals?

I think they should have understood that, yes.

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Q But you never said that to llen Weisselberg?

I never discussed it with llen Weisselberg.

Q nd you certainly never said it to Donald Trump, Junior; did you? But based on your own letter that you wrote, your words, and asked them to signed, you believe that they should have concluded that needed to give you appraisals?

bsolutely.

Q Why didn't you tell them?

To me, financial data, I think it's included, appraisals.

Q But that's not what it says. We can agree on that?

That's not what it says.

Q Was Donald Trump, Jr. capable of determining which G. . .P. exceptions should have been included in a Statement of Financial Condition?

I think he would have needed to rely on Jeff McConney and llen Weisselberg.

Q So he should have relied on the two guys that weren't CP 's?

He should have relied on his CFO and his controller, yes.

Q Should he have relied on their outside accounting firm?

It was not my job to -- they -- in-house reviewed it, and if they had any questions, they could have come back to us.

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Q This was not your job, to explain to them, that's something that you wanted?

Mr. Weisselberg understood what -- accounting. Mr. McConney has a lot of expertise in --

Q But they weren't certified public accountants, and you never explained it to them, and you wrote this letter, not them.

MR. W LL CE: Objection. Compound question.

THE COURT: Sustained.

nd I hope that the reporter got that. Weren't, not, they were.

MS. H BB : She did.

MR. SU REZ: Let's pull up the Jeff Supporting Data for this particular year. That was PX 742. Is that right, PX 742? Yes. PX 742.

(Whereupon, a document was displayed, and handed to the witness.)

Q This was the Jeff Supporting Data spreadsheet. This was what was sent to you; correct, Mr. Bender?

This is the final version that we used for the compilation of Mr. Trump's 2016 Statement of Financial Condition.

Q PBC. Prepared by client?

Yes.

Q True or not true?

Yes.

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Q Okay. That's what you said that meant; right?

Yes, sir.

Q ll right. So, this is what they sent you?

This is -- they may have made changes, as I previously stated. They sent it to us, and then they would send us updated copies, and updated copies, and this is what their final version would have been.

Q Okay. So this is the supporting data that you used to prepare your compilation report; correct?

This is the supporting data I used to compile the compilation.

Q Okay. To compile the compilation?

Yes.

Q Which is different, in your mind, from preparing the compilation report?

Yes.

Q How is that different?

preparation is a different level of accounting services than a compilation. I just want to make sure that I was using the right language.

Q Okay.

MR. SU REZ: Now, scroll up here. Can we just scroll through this compilation report, from top to bottom, so we can see all the facts and figures that are included?

Q You would agree, Mr. McConney, that you were required

to review all of these notes in connection with preparing your compilation report?
I'm Mr. Bender, not Mr. McConney.
Q I'm sorry. Bender.
We were not hired to review this. We were hired to compile these.
Q ll right.
These financial statements.
Q Were you required to read it?
We did read it.
Q Not we, Mr. Bender. You did you read this document?
Did I read the whole document? I presumably -- I can't answer if I read the whole document.
Q You can't answer whether you read the whole document?
Yes.
Q Okay. The Statement of Financial Condition of the President of the United States, and you can't answer if you read the whole document. Is that right?
I can't answer, today, that I read every line.
Q So let's scroll down to the triplex.
(Continued on the next page.)

MR. SU REZ: May I approach the screen?
THE COURT: Ten-minute warning.
Q See where it says here "triplex based on comps from TIR sales office 30,000 SF @ $10,900 a square foot?"
Yes.
Q Is that something you read?
I couldn't tell you if I read it back then, no.
Q Is that something you understood?
I understand it today.
Q You understand it today but you can't tell me if you read it back when you were preparing the Statements of Financial Condition report? Yes or no?
Did you read it back then?
I did not. I was not the person. I did not do all the work in 2016 financial statement. I had staff working on it. I do not know if I read every word of the worksheet.
Q Okay. Let's pull up the 2017 compilation report. Let's pull up the supporting data. Jeff Supporting Data from 2017 PX-758. Let's go down to the triplex again.
THE COURT: I think it's pronounced tri-plex.
MR. SU REZ: In Florida, it's try-plex
MR. W LL CE: There's a dispute from plaintiff's team.
MS. H BB : It's tri-plex.
MR. W LL CE: This divides many people.

MR. SU REZ: Let's go back to the other side here.
Q Do you see here where it goes from "triplex based on comps from TIR sales office 30,000 square feet @ 10,900 a square foot?"
Yes.
Q Triplex based --
THE COURT: Triplex.
Q Triplex based on comps from 432 Park?
Yes.
Q Did you read that?
I don't know if I read that.
Q You don't know if you read that? This is for the 2017 Statement of Financial Condition when were you compiling the Statement of Financial Condition for the President of the United States, Mr. Bender; is that not the case?
Yes, sir.
Q The square footage of the triplex changes?
THE COURT: What is a triplex?
MR. SU REZ: The triplex, sorry, your Honor. The triplex.
Yes.
Q Did you see that it changes there?
I see it changed.
Q You see that it changed?

Today I see it changed.
Q Did you ever pick up the phone and say, to the President of the United States, your triplex just got cut by 2/3?
I did not. I have no independent memory -- we missed it.
Q You missed it?
Yes.
Q You missed it?
Yes.
Q President Trump hired you to prepare a compilation from the Statement of Financial Condition for the Leader of the Free World and you missed it?
Yes, sir.
Q You never picked up the phone and said, sorry, I missed it?
Didn't have his phone number but we missed it.
Q You missed it. You never said, hey, there's an error here or, hey, 2/3 of your triplex just disappeared, did you?
No, sir.
Q Do you think that's something President Trump would have wanted to know?
I can't answer what --
Q Do you think that's something --
THE COURT: Let him answer.

I can't tell you what Mr. Trump wanted to know.
Q Do you think that is something that President Trump, who relied on you, who relied on Mazars, who was loyal to you for all those years, would have wanted to know?
MR. W LL CE: Objection at this point. Testifying about what Mr. Trump relied on and wanted.
THE COURT: Overruled. I'll allow it one more time. Go ahead. You want to ask it again?
MR. SU REZ: Yes.
THE COURT: Go ahead.
Q Do you think the Leader of the Free World would have wanted to know that you had been given information that his triplex apartment had been stated at a different square footage and reduced by 2/3 in the year 2017?
Do you think that is something that the man who paid you millions of dollars a year would have wanted to know?
I can't speak for Mr. Trump.
Q Okay. Let me ask you, if we go back to 753, Exhibit 753. In Exhibit 753, you made a promise to Mr. Trump in your engagement letter, were you promised that your engagement cannot be relied upon to identify or disclose any financial misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing or noncompliance with laws and regulations. However, we will inform you of material errors and any evidence or information

that comes to our attention during the performance of our procedures that fraud may have occurred.
Do you think that 2/3 of his townhouse disappearing, of the triplex disappearing, from 2017 to 2018 is not something that you should have said to the Leader of the Free World?
Did not come to our attention.
Q It did not come to your attention? Oops. Sorry, I screwed it up?
MR. W LL CE: Objection at this point. That's not a question.
Q Mr. Bender --
THE COURT: Just questions, not commentary.
We didn't screw it up. The Trump Organization made a mistake, and, we didn't catch it.
Q You didn't catch it?
The Trump Organization --
Q You didn't catch it in '18. You didn't catch it in '19. You didn't catch it in '20. ll those years, you didn't catch it, you never came to him and said, sorry, Mr. President. I made a mistake. I didn't catch it.
ll of those years, millions of dollars in fees later and you didn't catch it?
MR. W LL CE: Objection. We covered this ground multiple times now.

THE COURT: We only have four more minutes.
Q It goes to the heart of the case. This was someone that -- I am emotional about it because it's not funny because the Leader of the Free World, who was keeping us safe, who was keeping this county safe, relied on you, Mr. Bender, not to screw this up, and, you screwed it up?
No, I did not.
Q Okay. You just missed it?
We were engaged to do a compilation and the compilation, as we discussed earlier, does not require us to outline the compilations and we met our compilation, what was required for a compilation.
Q You met all that was required for the compilation and that includes missing 20,000 square feet is something that was not required for you to disclose to your client?
If you-- we missed it.
Q You missed it. Now, he's sitting here today, his company is going through hell. Tens of thousands of employees are going through hell because you missed it?
MR. W LL CE: Objection.
No, because they put the wrong number. They misrepresented the numbers on their data.
Q You never called and told him about it?
We did not.
Q When you went to the White House -- you went to the

White House, right? He invited your son to the White House. You mentioned to him, hey, we missed it?
MR. W LL CE: t this point, can he please let the witness answer the question he is asking?
THE COURT: He's already answered it. So, I don't know if that matters. Counselor, I think he's already said he did not tell them. So, you don't have to ask him whether he did not tell them when he was at The White House. He said he didn't tell them.
Q Was making this mistake the reason Mazars forced you to retire?
No.
Q You were planning to retire anyway?
The partnership agreement of Mazars requires you to retire at 65.
Q That's why you went to the President mortified? That's why you went and apologized for having made this mistake?
MR. W LL CE: Objection. If he wants to include something about a conversation of Mr. Bender and the President, he can ask a question about it. He cannot testify.
THE COURT: Considering this is cross-examination, obviously -- I'll leave it at that.
MR. W LL CE: Can I at least raise a foundation

objection?
THE COURT: Overruled.
Q So, Mr. Bender.
MR. SU REZ: Yes, sir?
THE COURT: So, you'll ask it again or you'll --
MR. SU REZ: It's been asked. Overruled. I don't know. Does he have anything to say for himself?
MR. W LL CE: Objection.
THE COURT: You can't ask him does he have anything to say for himself.
MR.SU REZ: In response to the last question, you overruled the objection. He's sitting there.
Q You missed it.
I never went to Mr. Trump mortified. I was never mortified.
Q You lost your biggest client, the client that literally made your entire professional reputation, Mr. Bender. Your entire identity was being the big accountant for the powerful Trump Organization for the President of the United States and you blew it.
MR. W LL CE: Objection.
THE COURT: Sustained.
Q Let's get into 2017 then.
THE COURT: Two-minute warning.
Q PX-755 let's see what else. This is the compilation

report for 2017, Mr. Bender. Mazars, that's your logo on the front page, right?
Yes, sir.
Q Okay. It's not the Trump Organization logo?
No, sir.
Q They're not the ones taking credit for this, you are?
Mazars compiled the financial statement.
Q You know, Mr. Bender, what I think bears repeating for the Court. The Jeff spreadsheets weren't attached to this document that went between the two Mazars logos, right?
No, sir.
Q No. It was just the Statement of Financial Condition and your compilation report, correct?
Yes, sir.
Q nd the notes?
Notes are considered part of the accountant's -- notes are considered part of the Statement of Financial Condition.
Q The notes that are considered part of the Statement of Financial Condition are also discussed in your accountant's compilation report, correct?
Repeat the question, please.
Q The notes that form part of a Statement of Financial Condition are also referenced in your independent accounting compilation report; are they not?

I'm just checking. Yes, they are.
Q Yes, they are.
THE COURT: Okay. We're going to break for the day. We'll resume tomorrow at 10:00 we have to take care of some housekeeping matters right now and my law clerk has a question.
MS. GREENFIELD: Sorry. To make sure we're on track, which witnesses, besides continuing with Mr. Bender, do we intend to call tomorrow?
MR. W LL CE: I believe the next witness is Cameron Harris from the Whitley Penn accounting firm and then, I believe, Jeff McConney will come after him.
MR. GREENFIELD: Thank you.
MR. KISE: To be clear, we don't need Mr. McConney here tomorrow morning? We'll continue with the cross tomorrow.
MR. W LL CE: Up to you guys. I don't think Mr. Harris will be here very long for our direct but on the cross-examination of Mr. Harris and the continued cross-examination of Mr. Bender --
MR. KISE: We'll work that out. We want to make sure your witnesses are here.
THE COURT: Okay. Thanks, everyone.
(Whereupon, the trial is continued October 4, 2023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NY v.

DON LD J. TRUMP ET L

October 4, 2023

SUPREME COURT - NY COUNTY

Original File 10.4.23PEOPLEvTRUMP.txt

Min-U-Script® with Word Index

SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - P RT 37
----------X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK, Index No. 452564/22

Plaintiff,

-against-

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY McCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC; ND SEVEN SPRINGS, LLC;

Defendants.
----------X

60 Centre Street
BENCH TRI L New York, New York
October 4, 2023

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OFFICI L COURT REPORTERS

THE COURT: If this was Broadway, we'd be having a long run here. I think we're getting the photographers.

(Photos taken.)

THE COURT: They do this every day. I mean, they look the same.

Is the defense going to recall Donald Bender?

MR. SU REZ: Yes, sir.

THE COURT: It's a little confusing. There are two Donald's. Okay, let's get him in.

MR. SU REZ: Good morning, your Honor.

THE COURT: Good morning.

MR. SU REZ: I've taken heed to a request to speak more slowly today. I also understand that it's pronounced, in the great State of New York, triplex.

MR. KISE: In the south, it's just called apartment.

THE COURT: Chris, do you have triplexes down there?

MR. KISE: That's why it's called an apartment, no.

THE COURT: Welcome to New York City.

(Whereupon, the witness enters the courtroom.)

THE COURT: I'll remind the witness, as I always do, that he's still under oath.

THE WITNESS: Thank you, your Honor.

THE COURT: Counselor, whenever you're ready, please proceed.

CROSS-EX MIN TION (Cont'd)

BY MR. SU REZ:

Q Mr. Bender, good morning.

Good morning.

Q Yesterday we were taking a look at Plaintiff's Exhibit 758; and, I just wanted to thank you for acknowledging the mistake, the change in value of the triplex from 327 million to 116 million.

MR. SU REZ: If you can please pull up the 2016 and 2017 Statements of Financial Condition.

Q I just wanted to walk you, Mr. Bender, through both statements, the June 30, 2016 statement, Plaintiff's Exhibit 756 with Mazars and WeiserMazars logo on the front page and then Plaintiff's Exhibit 755, which is the Statement of Financial Condition, Mazars US logo on the bottom.

Mr. Bender, between 2016 and 2017, I take it, Mazars stopped using the WeiserMazars and just started referring to Mazars?

Yes, our name changed many times over the years.

Q If you can please go to the next page, on both documents. The 2016 Statement of Financial Condition was dated March 10, 2017; is that correct?

Yes, sir.

Q Just a few months later, in October of 2017, the same year, the 2017 Statement of Financial Condition was issued.
Is that your signature there on October 30, 2017?
It's either mine or electronic copy thereof.
Q Okay. This was a particularly interesting year because President Trump assumed the Presidency on January of 2017, correct?
Yes, sir.
Q nd for that reason, there was an understandable delay producing the compilation report for the 2016 Statement of Financial Condition?
You'd have to confirm that with the Trump Organization. It was just a guess yesterday.
Q You would agree the Trump Organization, on its own, changed the value of the triplex. It wasn't prompted by anybody to do it?
It wasn't prompted by Mazars.
Q Okay. Moving on. Did you have an opportunity last night to speak to anybody about your testimony?
I spoke to counsel last night.
Q Did you speak to anyone from the New York ttorney General's Office?
No, sir.
Q Did your counsel speak to anyone from the New York

ttorney General's Office?
You'd have to speak to them.
Q re you aware if your counsel spoke to anyone from the New York ttorney General's Office?
I don't recall any conversation with counsel last night.
Q ll right. Moving on. Yesterday --
MR. SU REZ: Let's pull up the testimony from yesterday.
Q We had a discussion about whether you were the relationship partner in charge of the Trump Organization when Weiser merged into Mazars, correct?
Yes, sir.
Q You told me there was a gentleman named Gerry Rosenblum that was the partner in charge for a period of time?
For a number of years.
Q Okay, for a number of years.
MR. SU REZ: Let's pull up the 2011 engagement report.
MR. KISE: Just to make a record observation. Sorry. I want to be clear, the fact they were pointing to documents that are in evidence now doesn't waive our objection as to the Statute of Limitations. I mean, we're working with the record as it exists.
THE COURT: ll right. I understand and I

agree.
MR. KISE: Thank you, Judge.
MR. SU REZ: Your Honor, we're providing the ttorney General's Office a copy of an exhibit we're going to use solely for impeachment. It bears the Bates labeled Mazars D NY GJS 0003106, and, I'd like to ask Mr. Bender if he recognizes this document.
THE WITNESS: re we finished with this one?
MR. SU REZ: You can set that down.
THE WITNESS: Thank you. Thank you.
Yes, I recognize it.
Q ll right. You see this is a Weiser Engagement Continuance Form?
Yes, sir.
Q What does this document represent?
This is a part of our client acceptance process, client continuance process in this case.
Q This was for Statement of Financial Condition prepared June 30, 2011. You see on the right-hand corner date of financial statement?
I guess so, yes.
Q Okay. Do you see where it says "partner"?
Yes.
Q Is that your name, Donald Bender?
Yes.

Q Is Mr. Rosenblum's name on there?
No, sir.
MR. SU REZ: Let's pull up the 2012. Your Honor, I will move this document into evidence solely for impeachment purposes.
THE COURT: Granted. It's in evidence solely for impeachment purposes.
MR. W LL CE: s we're evaluating whether this comes in for impeachment, what is the testimony this was impeaching? Can you give us a specific date?
THE COURT: nd who was the partner?
MR. SU REZ: t the time, Gerry Rosenblum.
MR. W LL CE: I wanted to see the date.
MR. SU REZ: He said at the time of the Mazars transition and we'll move now to Mazar's years when Gerry Rosenblum --
MR. W LL CE: I'm not sure that it established how this impeaches his testimony.
MR. SU REZ: Mr. Bender testified yesterday that at the time that Weiser merged into Mazars, Gerry Rosenblum was the partner in charge of the Trump Organization. The Engagement Continuance Reports showed that Mr. Bender is the only person listed as a partner in connection with the engagement in these reports for the Trump Organization.

MR. W LL CE: I guess I wasn't aware of when this merger was or what the date is and so how this is impeaching --

MR. SU REZ: We're getting there. It's got Weiser. I'm showing 2012, which will show the dates that Mr. Bender is the only one on there. 2016 will show only Mr. Bender on there.

MR. W LL CE: I understand it's impeaching the statement at the time, I guess, of the merger. I'll confess for the record, I did not know when that merger occurred and why this document impeaches his prior testimony.

THE COURT: Just to give perspective on this, there's no jury here. I don't think it matters that much whether somebody was the lead partner or is not the lead partner, who signed it. I think it's easiest just to move on.

MR. W LL CE: I'm happy to move on. My objection is overruled, I guess, your Honor.

THE COURT: Take a hint.

MR. SU REZ: This is now WeiserMazars engagement continuance report, your Honor; and, the Engagement Continuance Report that I would like to show the witness for impeachment purposes, relates to the financial statement dated June 30, 20127, and I'd like to ask the

witness if he recognizes this document.

THE COURT: You're being asked if you recognize that document.

THE WITNESS: I don't have the document in front of me.

(Handing.)

Thank you. Yes, I do.

Q Do you see who the partner that's listed for this engagement is?

Yes.

Q You see where the client is?

Yes, I do.

Q Who is the client?

Donald J. Trump.

Q Who is the partner?

I am.

Q Okay. Does this refresh your recollection as to whether you or Mr. Rosenblum were in charge of the account at the time that Weiser merged into Mazars?

Okay. So, to make everybody understand, Weiser has had five different names. We merged about 22 to 25 years ago. I think about 23 years ago. Our original name-- excuse me if I miss any-- was MRWeiser then I think we became Weiser LLP, then we became WeiserMazars, and then we did Mazars US .

It's all the same firm. We just changed our

name and we merged about 23 years ago.

t that time we merged, I was a junior partner in the firm, and, Gerry Rosenblum was the senior partner at the firm.

Q t what time was Mr. Rosenblum the partner in charge of President Trump's account?

I couldn't tell you -- it started, he was probably -- he was. I was not senior partner of the firm until 13, 14 years ago. He was still more the senior than me in the firm, but, I would say I probably took over somewhere about 20 years ago as the lead partner from -- I was still considered the lead partner on the account but he was the senior partner, and I was still junior partner in the firm.

Q You were the lead partner in the account and Mr. Rosenblum was senior to you?

Mr. Rosenblum, when we merged, was senior partner and in charge of the account. number of years later, he transferred a lot of the work to me, but, he was still senior partner, and I was junior partner of the firm.

Q But you were the partner in charge?

We shared it together for a number of years, but, it was, you know, we co-shared the work.

Q You co-shared the client, but, to be sure, in 2011, Mr. Rosenblum wasn't your copartner on this engagement?

No, sir.

Q Nor was he in 2012?

No.

MR. SU REZ: Let's pull up 2016. Your Honor, I would move this into evidence for impeachment purposes solely.

THE COURT: The ttorney General just told me they have no objection.

MR. W LL CE: Certainly not on Statute of Limitations, your Honor.

Q Do you recognize this document, Mr. Bender?

Can I see the original, please?

MR. SU REZ: This document has been premarked by defendants as Exhibit 949.

Q The Mazars logo up top?

Please let me read it.

Q Take your time.

Thank you.

Q Do you recognize this document?

Yes, I do.

Q What is this document?

This is the Engagement Continuance Form for the Trump Organization for 2016.

Q Okay. Who's the partner in charge here?

I am.

Q Who's the manager?

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Jennifer Safran.
Q Who's Jennifer Safran?
My senior manager and later became partner.
Q Then she became your partner?
Yes.
THE COURT: Counsels, let's have a real quick side-bar. s I like to call it, front bar.
(Side-bar discussion held off the record.)
Q Mr. Bender, in connection with this document, I'd just like to give you an opportunity to refresh your recollection. The page bearing Mazars D NY GKS 01201998. What you have in front of you.
Do you see that, 01998?
Yes, sir.
MR. W LL CE: We want to note our objection is that he's refreshing his recollection for a document that he hasn't established that he doesn't have a recollection to be --
THE COURT: That is the rule. You can't refresh a recollection if the person doesn't recollect.
Q Mr. Bender, yesterday I asked you how many engagements the Trump Organization-- you had done for the Trump Organization over the years and you weren't quite sure if it was 11,000 or another number?
Yes, sir.

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Q I'd like to run through the WeiserMazars LLP work in process realization, by client, for the Trump Organization from January 1, 2016, to December 31, 2016, which starts on page one of sixteen.
I'd like you, Mr. Bender, to note the number of entities, different entities controlled by the Trump Organization that are listed here in the first page. I would ask you if these were all entities that you provided services for in the year 2016?
These are all entities that Mazars provided services for. Some of them on this page might be independent condominium associations that were not controlled by the Trump Organization but these are all entities that were work that Mazars worked on or somebody worked on in 2016.
Q These were all grouped here January 11, 2017 DJT-1, Donald J. Trump, Bender.
That grouping would mean that these were all the entities that you considered were part of the client group for President Trump, correct?
These are all clients that we considered as one billing group for accounting purposes.
Q s one billing group. You'd agree with me on this page there's at least-- and by no means do I want to spend the Court's time counting each of these, but, there's at least two dozen entities on this page?

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That's fair.
Q Then I'd like to scroll through so the Court can see and see if we can refresh your recollection, Mr. Bender.
Over the first 16 pages, there's about two dozen entities on each page, maybe more. These were all entities that you and WeiserMazars provided accounting services for just in the year on 2016; is that correct?
Yes, sir.
Q So, would you agree with me, roughly, that over, I don't know-- what's the math? Twenty-five, twenty-four entities per page, over 16 pages?
pproximately.
Q Do you know what that math works out to?
203.
Q 203?
Could be. I'm on my phone. Roughly, 200.
Q Roughly, 200 entities. ll right, 200 entities in one year that you provided engagements for; is that correct?
Yes, sir.
Q You provided work for the Trump Organization for a period of 30 years?
Yes, sir.
Q Does that refresh your recollection as to how many separate individual engagements you may have undertaken for the Trump Organization?

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In the early years, I only worked on one engagement, Trump Equitable Fifth venue. I didn't work on these other engagements.
When Mr. Trump's business was strong, the number of entities that were being performed, I don't remember, somewhere between 50 to 100 entities a year.
So, I didn't work on earlier years. Earlier years most of these entities didn't exist.
Q So, in 2016 you did your work for over 200 entities --
MR. ROBERT: I'm having a difficult time hearing. I can't understand.
THE COURT: Mr. Bender, right into it. Slowly.
Q In the year 2016 there were, at least, over 200 entities that you were performing services for President Trump and the Trump Organization?
Yes, sir. Including outside entities but he didn't control.
Q That were all grouped under --
For billing purposes.
Q ll right. We'll continue going through there all the way to page 16.
So, Mr. Bender, and the Court, can see all of the different entities that Mr. Bender provided work for grouped under President Trump's billing code. We can stop

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here.
This is for the period of January 1, 2016 to December 31, 2016, Mr. Bender?
Yes, sir.
Q There you can see that, at the bottom, the partner total, partner total would be for you, correct, Mr. Bender?
Most of it, maybe not all of it.
Q There's no other partner listed in this engagement, correct?
Some of the partners might have billed more.
Q No other partner's name appears there where it says "Bender"?
Yes.
Q Not some other partner?
No.
Q So, you're the partner on this document?
Yes, sir.
Q "Partner: 2.77 million." You see that down there, "production"?
Yes, sir.
Q Then you see "Billing: 1.9 million?"
Yes, sir.
Q Does this refresh your recollection as to how much money you billed the Donald J. Trump billing group in the year 2016?

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It appears that would be 1.95 million. 1,952,850.
Q What percentage of your work in 2016 was reflected by the Trump Organization with respect to your billable clients?
I don't recall.
Q If you can move to the page ending in 2017. Do you see this here?
Yes, I do.
Q Do you see where it says: "Controller, Jeff McConney formally worked for Spahr Lacher & Berk?"
Yes, I do.
Q Then is this something you would have written, Mr. Bender?
Did I write it or a member of my team wrote it? I can't tell.
Q You can't tell me?
If I wrote it or a member of my team wrote it.
Q Can you turn to page 2015. Do you see who it's from?
Yes.
Q Does this refresh your recollection as to who wrote it?
It may not have been me anyway. Could have been members of my team could have worked on it.
Q So, if something says it's from you, it doesn't necessarily mean it's from you?
I would have to see the sign-off in the binder to

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see who prepared it.
MR. W LL CE: t this point, can we note an objection to relevance. I'm not sure how this relates to any issue that needs to be decided in this case.
THE COURT: Offer of proof. What is this showing?
MR. SU REZ: Your Honor, this is showing that Mr. Bender, who signed all 12 however many Statements of Financial Condition that were introduced by the ttorney General on Monday may not have seen or done all the work.
Just because it has his signature on it, doesn't mean that he's actually the person that prepared it.
MR. W LL CE: I believe he's already testified to that. So, I'm not sure how this is impeachment. It sounds like maybe he is trying to refresh his recollection about the details of engagement but I still fail to see the relevance.
THE COURT: I'll be charitable and let-- give him some latitude but I see the plaintiff's point.
MR. SU REZ: ll right.
THE COURT: Let me just say, I think you said just because it says it's from him, doesn't mean it's from him.
That's not his testimony, as I understand it. Just because it says it's from him, he wasn't the only

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person that worked on it. Is that correct, Mr. Bender?
THE WITNESS: Yes, these forms would have been submitted in certain years to the Executive Committee. So, people could help me prepare. partner doesn't normally do client acceptance continuance. There's staff that prepares these forms.
THE COURT: If it says it's from you, it's still from you?
THE WITNESS: The final responsibility is mine, your Honor.
Q The final responsibility is yours?
Yes.
Q Okay. So, the final responsibility is yours. We got that. Okay.
MR. SU REZ: Your Honor, I would ask to move in D-949 in evidence.
THE COURT: There's no objection. So, yes. It's in evidence.
MR. SU REZ: 2017. Pull 2017, the Engagement Continuance Form, if we have it. We'll come back to that later. That's fine. Okay, let's pull up premarked Defendant's 27.
Q Do you see here what this document is, Mr. Bender, and we'll certainly give the ttorney General a copy.
This copy -- can I have a paper copy, please? Yes,

sir.
Q Do you recognize this document?
It appears to be an F SB.
Q I think you would agree that the Statements of Financial Condition were prepared in accordance with SC 274?
I would have to check with experts to see. I'm not an expert on these matters, so I would have to check. Somebody -- it's a matter that I'd reach out to inhouse experts on.
Q So, whether SC 274-- when determining whether SC 274 applies to the President's Statement of Financial Condition, that's a subject matter you'd have to check with an expert?
I'm not on top of these F SB's today in my retirement mode.
Q Okay. If we can please move to page 10 of this document. Excuse me. Page 13.

(Continued on following page..)

Q Do you see at the top where it says estimated current value, Mr. Bender. Is that a concept you are familiar with?
Somewhat. gain, I'm not an expert on --
Q You are not an expert on estimated current value?
Not today; no.
Q Were you ever an expert on estimated current value?
I wouldn't say I was ever an expert on it, no.
Q Now, this section on estimated current value, this lays out the implementation guidelines; correct?
It appears so.
Q Can you read what 55-3 says?
"In determining estimated current value of some assets," parenthesis -- thank you, "for example, works of art, jewelry, restricted security investments, and closely held company -- closely held businesses and real estate," close parenthesis, "the person may need to consult a specialist."
Q Okay. So in determining estimated current values, the implementation guidance considers that you may need to consult a specialist; correct?
It's saying that you may need to consult a specialist, but this was a compilation that did not require me to -- I was not engaged to do that type of work.
Q nd in connection with preparing a compilation report for a Statement of Financial Condition, did you need to have an understanding as to what estimated current value was?

I had an understanding of what it was.
Q Did you have an understanding as to how estimated current value applied to real estate?
I had somewhat of an understanding, yes.
Q Did you consult with specialists to inform your understanding as to how estimated current value applies to real estate?
I may have discussed matters over the years with ndy Cohen. I don't recall.
Q Well yesterday, Mr. Bender, you said that you had discussed, with ndy Cohen, I believe it was the NikeTown lease.
You are right. mong other things.
Q Okay. But at your deposition, when we asked you about whether you had ever consulted with a specialist on estimated current values, you said you did not recall.
I don't -- I didn't recall at that time, and I didn't say -- I said I may have consulted with ndy Cohen, over the years.
Q Okay.
MR. SU REZ: Your Honor, may I play a clip from his deposition?
THE COURT: Sure.
Q Do you recall your deposition on pril 7, 2023?
Yes, I do.
MR. SU REZ: Can you please play the ndy Cohen?

(Whereupon, a video was played.)
MR. W LL CE: I'm just going to object. That doesn't impeach. It's a different question than he was just asking.
THE COURT: The rule is, you can only refresh your recollection if the person doesn't recall. I think I said it the opposite, last time. So again, there's no jury. Tell me what the point is.
MR. SU REZ: Your Honor, he didn't recall at his deposition whether he had discussed estimated current values with ndy. Yesterday he agreed that he had consulted ndy Cohen for estimated current values. Today, he is not a specialist in determining what estimated current value is, despite the fact that SC 274 requires him to consult with a specialist if he doesn't know it, and today he doesn't recall if he consulted with a specialist or not.
MR. W LL CE: The testimony that he showed was a question about whether he consulted with an expert on the difference between estimated current value and fair value. It was not on current estimated value, standing alone, which is the question he has been asking Mr. Bender this morning, so it's not impeachment. If he want to probe that area, we have no objection.
THE COURT: This is starting to sound like, how

many angels can dance on the head of a pin.
Objection overruled. Let's just keep moving.
Q Is there a difference between estimated current value and fair value?
There is a difference. Yes.
Q nd are you familiar with the differences?
Estimated current value delineates -- there's five standards, five or six methodologies, that are suggested here --
MS. H BB : I'm sorry. I have to say, I can't understand anything Mr. Bender says.
There are five or six methodologies that are delineated here that can be used to estimate a current value.
Q nd are you an expert in those different areas?
No, I'm not.
Q ll right. Do you understand how estimated current value is different than fair value?
I understand it, to a certain extent.
Q Okay. What is your understanding, to a certain extent, of what the difference is?
Estimated current value would use these five, through E, items. Their value, fair market value, would be what a willing buyer or seller would use. That would be fair market value, and that's the main difference I can think of, right now.
Q So in your mind, there's a difference?
Excuse me?

Q In your mind, there is a difference?
Between fair market value and estimated current value?
Yes.
Q nd is estimated current value more flexible than fair value?
I would say so.
Q nd is it correct that there's no one generally accepted way to determine the estimated current value of an asset?
I believe so.
Q nd would you have consulted a specialist in determining whether it was appropriate to use any particular basis for establishing estimated current value of an asset?
The 57th Street example I gave yesterday would be an example that I can think of today, that we consulted.
Q ny others?
I'm just going through a balance sheet in my head.
Q That's President Trump's balance sheet?
Statement of Financial Condition.
Not that I can think of, off the top of my head.
Q You have the statement, President Trump's Statement of Financial Condition in your head?
No, but I saw parts of it yesterday. I know what assets he owned, generally.
Q ll right. Let's turn to 55-6, on page 14.

Do you see where, 55-6b, it says, "Information that may be used in terminating -- in determining estimated current values of investments in real estate, including lease holds includes any of the following," and b says that, "Discounted amounts of projected cash receipts and payments relating to the property, or the net realizable value of the property, based on planned courses of action, including lease holds whose current rental value exceeds the rent in the lease."
Do you see that?
Yes, sir.
Q Do you know what realizable value of the property, based on planned courses of actions, means?
I would need to consult an expert, before I gave testimony.
Q In connection with preparing President Trump's Statement of Financial Condition, did you ever consult an expert to understand what that meant?
I don't recall, at this moment.
Q Okay. Moving on.
MR. SU REZ: If we could pull up page 293 from yesterday's testimony.
Q Do you see when I asked you yesterday, Mr. Bender:
"They --" referring to the Trump Organization "-- would give you an opportunity to review loan agreements before they entered into them?"

nd you responded:
"Many years ago they might have, certain paragraphs."
Yes, sir.
Q nd I said:
"Certain paragraphs?"
nd you said:
"Yes."
nd you responded -- and I continued to ask you:
"They wouldn't send you loan agreements and ask you, Hey, Mr. Bender, can you review these for us and let us know if this is something you can enter into?"
Yes.
Q nd you responded:
"I don't think they sent full agreements. I do remember seeing certain paragraphs, from time to time."
Yes.
Q ll right. I would like to show you a document to see if it refreshes your recollection as to whether documents were sent to you by the Trump Organization while they were still being negotiated for your review, and we have marked, or we have -- and we'll offer, for impeachment, a document bearing Bates label Mazars D NYGJS7O4 -- excuse me -- 01432223.
re we finished with this document?
Q You can set it aside.

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MR. W LL CE: I'm sorry. That was a production number you were reading? You said Bates. I thought you said documents --

MR. SU REZ: No. Just a Bates label. Mazars D NYGJS.

(Whereupon, a document was handed to the witness.)

Q Do you recognize this document?

Not particularly.

Q Do you see where it says, "From llen Weisselberg to Donald Bender," at the top?

Yes.

Q Would Mr. Weisselberg send you emails?

Excuse me?

Q Would Mr. Weisselberg send you emails?

Yes, sir.

Q nd they would have documents attached to them?

Yes. From time to time.

Q Do you see here, "Forward OPO loan agreement?"

Yes, sir.

Q Do you see where it says, "JDG notes on BL final Doral loan agreement to OPO loan agreement?"

Excuse me. Say that again, please?

Q Do you see where the attachments up top --

Yes.

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Q -- say, "GDG notes -- JDG notes on BL final Doral loan agreement to OPO loan agreement?"

Yes.

Q Does this document refresh your recollection on being shown loan agreements prior to their being entered into?

nd you can review the attachment to the document. We can pull it up on the screen and scroll through.

I remember from time to time, looking at certain pages or paragraphs. I remember Jason Greenblatt, chief counsel for Trump, would drive me nuts. He would send me only two or three pages of a loan agreement. I never reviewed any full loan agreements, prior to them being signed, to the best of my recollection.

Q Okay. But after they were signed, did you have an opportunity to review the loan agreement?

We would look at the loan agreement, if it would be required information for a footnote disclosure on a financial statement.

Q nd what would you do with the loan agreement, when you had to review a footnote disclosure on a financial statement?

Certain sections of the -- of the loan agreement would be looked at to discuss things like terms of a loan, payment, interest rates, information that we would need to write a footnote.

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Q Okay. So you would look at the whole loan agreement, and it wasn't in your possession?

Excuse me?

Q You would see the whole loan agreement, and it would be sent to you?

I would have the whole loan agreement. I wouldn't review the whole loan agreement.

Q Okay. So, just because something was sent to you doesn't mean you reviewed it?

That is correct.

Q Okay. Yesterday, I asked you, the Trump Organization -- if you were the in-house accountant at the Trump Organization.

Yes, sir.

Q nd I think we discussed whether you were the only certified public accountant.

I'm not --

MR. W LL CE: Objection.

Q Whether you were the only certified public accountant that interacted with the folks that prepared the Statements of Financial Condition.

THE COURT: Overruled.

I believe you did ask me that, yesterday.

Q nd we established that, in fact, I believe you were?

No. In hindsight, I do realize that they may have had

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some CP s in the Trump Organization who worked on portions of the financial statement, from year to year.

Q Do you recall who they were?

I know some schedules were prepared by Mark Hawthorne from the Hotel Group, so they did have a CP in house. t least, he did it, I think. He's all I remember ever discussing a schedule with.

MR. SU REZ: Let's pull up a document bearing Mazars D NYGJS01487514.

(Whereupon, a document was displayed, and handed to the witness.)

Q nd first, Mr. Bender, do you recognize this document?

No, I do not.

Q From Mazars, D NYGJS01487514?

Yes.

Q Is this a document that was sent to you?

Yes.

MR. SU REZ: Can you turn to the last page of this document?

Q Do you see where it says intraoffice memorandum?

Yes.

Q Within the office?

Yes.

Q nd who is the first person there, that's listed?

I guess the Trump Organization doesn't know I'm not on

their payroll.
Q Okay. nd it says, To Donald Bender?
I wasn't on the Trump Organization payroll.
Q Well, $2.1 million in fees, and you were listed, to Donald Bender?
I guess they have an internal problem they need to address.
Q Did you ever correct them and say, I'm not inside?
I didn't. I probably would not have read it.
Q You would not have read it?
No.
Q ll right. So, this is something you would not have read, a copy of the term loan agreement by and between Trump Endeavor 12, LLC borrower, and Deutsche Bank Trust Company mericas, lender.
I may not have been required to read it, no.
Q Okay. So, if it would have been sent to you, we shouldn't assume that you were required to read it?
I may not -- I would have no need to read it for the -- we were not engaged to do any work that would have required me to read the whole document.
Q You were engaged to prepare audits for Trump Endeavor 12?
No, sir.
Q You were engaged you were engaged to prepare

compilations for Trump Endeavor 12?
Compilation, I believe, without footnotes.
Q nd you wouldn't have reviewed the loan agreement in connection with the Trump Endeavor 12 loan from Deutsche Bank?
I can't say if I did or I didn't.
Q Okay. Moving on.
MR. SU REZ: If we could please put up PX729, which was marked yesterday. Or, on Monday. Or, perhaps yesterday.
Q Do you recognize this document, WeiserMazars?
Yes, sir.
Q nd it's got both the Mazars and the WeiserMazars logo, and if you could turn over to the next page -- and this is the independent accountant's compilation report; is that correct?
Yes, sir.
MR. SU REZ: Turn over to the next page.
Q WeiserMazars, LLP. Is that either your signature or your digital signature?
Yes, sir.
Q Okay.
MR. SU REZ: nd if you could, turn over to the next page.
Q I would like to walk you through the Jeff Supporting Data that relates to this Statement of Financial Condition.

MR. SU REZ: nd we'll pull that up. I think that was introduced as PX731.
(Whereupon, a document was displayed, and handed to the witness.)
Q nd Mr. Bender, in connection with the Statement of Financial Condition, is this something that you saw?
The schedule?
Q Did you see it?
Yes, I did.
Q Did you review it?
I did not review it.
Q Did not review it?
Review is -- the job was a compilation.
Q Okay. Did you read it?
I read -- may not have read every line, but I did look at it.
Q You did look at it.
MR. SU REZ: nd if we could, scroll down and start with Trump Tower.
Q Do you see there where it lists the basis of valuation for Trump Tower?
Yes, sir.
Q When you prepared the compilation report --
When I compiled the compilation report --
Q You compiled, produced the compilation report -- when

you produced the compilation report, did you see this?
Yes, I did.
Q nd what did you do with it?
I -- me or a member of my team appears to have cross referenced it to worksheet 4800.01 and 4800.01a. It appears they also did some math checks.
Q Okay. So you did see it?
Me or a member of my team. I would have to check the sign-offs.
Q Sitting here today, do you recall if you saw it?
Did I see the schedule? I'm sure I saw the schedule.
Q Did you see the basis for valuing Trump Tower when you prepared the compilation report?
I believe so.
Q Okay.
MR. SU REZ: Scrolling down to the next asset. Stop.
Q Do you see there, NikeTown, when you prepared the compilation report for NikeTown, did you see the basis for the asset value ascribed to NikeTown?
I can't say if I saw every one, without looking at the sign-offs, but it -- I need to confirm the sign-offs, but I believe I would have seen it.
Q You believe you would have seen --
I believe I would have seen it. I can't say I looked

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at every line in this worksheet, no.
Q Okay. So you didn't look at every line of the spreadsheet, and you are not sure if you saw it.
I would need to see the sign-offs in the binder to confirm who worked on it.
Q But you took responsibility for everything that was in the compilation report; correct?
Yes, sir.
Q ll right. So either you or a member of your team would have seen this?
Yes.
Q But you don't recall if you saw it?
I don't recall if I saw it, in 2015, line-by-line. No.
Q Okay. Line-by-line. Let's go to the next asset. Do you see where it lists the basis of valuation for 40 Wall Street in this document?
Let me just adjust my chair, so everybody is happy. Yes, I do.
Q Did you see it at the time that you prepared the compilation report, in 2015?
I can't say if I looked at every line of it, but I'm sure I saw a portion of it.
Q Okay. What portion of it might you have seen?
I don't recall, today.

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Q Okay. Would you have seen where the asset value was calculated, based on an NOI?
Yes, sir.
Q Would you have seen where a cap rate was applied?
I presume so, but I would have to check the sign-offs on my work papers to confirm who worked on the work.
Q So you are not sure if you saw it or not?
I would have to double check, but I believe I would have probably seen it.
Q You probably did see it. Okay.
Let's go to the next asset, Trump Park venue. Did you see that?
gain, I would have to confirm who worked on it, and I would have to check the sign-offs in the binder.
Q So, you are not sure if you saw it in 2015?
I can't be sure what lines I looked at on the worksheet, or what lines I did not look at on the worksheet.
Q How about the club facilities, there. I think the first one is the Mar- -Lago club. Do you see that.
I can't tell you which exact lines I looked at on this worksheet, and which lines I looked at as part of my compilation procedures.
Q So you might have looked at some, and not others?
I may not have looked at every line in the worksheet.
Q You may not have looked at every line on the

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worksheet. Okay.
Can you tell me how you would --
MR. SU REZ: Withdrawn.
Q So, you may not have looked at every line on this worksheet for club facilities?
No, sir.
Q ll right. Let's keep going.
Would you have looked at every line on the worksheet for the Trump International Golf Club, Florida?
I'm not sure which lines I would have looked at and didn't look at.
Q Okay. So you might have looked at some, and not others?
Yes, sir.
Q nd the Trump National Golf Club in Briarcliff, do you recall which lines you saw and which you didn't?
No, I do not recall, today, which lines I looked at and which lines I didn't.
Q So you may have looked at some, and not others?
That is possible.
Q ll right. nd the Trump National Golf Club in Bedminster, the next line, right there. Do you recall which of those you looked at, and which you didn't?
No, sir. I do not.
Q So, it's possible you may have looked at some and not

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others?
Yes, sir.
Q ll right. The Trump National Golf Club, Colts Neck, do you recall which of those lines you looked and which you didn't?
No, sir. I do not.
Q May have seen some, and not others?
That's correct.
Q The Trump National Golf Club, Washington D.C. Do you see that?
Yes, sir.
Q Do you recall which lines you looked at when you were compiling the Statement of Financial Condition in 2015?
No, I do not.
Q Okay. The Trump National Golf Club, Philadelphia. Which of those would you have reviewed? Which lines of those would you have reviewed, in connection with preparing the compilation?
I couldn't tell you which lines I looked at and which lines I didn't look at, today.
Q So you would have looked at some and not others?
I'm not sure what I looked at, today, and what I didn't look at.
THE COURT: Can we just agree that the questions will be the same, and the answers will be the same, for

each one of these? We have gone through, I don't know, eight, ten. It's always the same.

I would ask Mr. Bender, you are more familiar with this document than I am: Will your answers be the same, if the questions are the same, as to each particular property?

THE WITNESS: I believe so, your Honor.

THE COURT: ll right. Then, let's move on.

MR. ROBERT: Your Honor, if I could just have 30 seconds to talk to my colleague, your Honor?

THE COURT: Sure.

(Whereupon, the witness spoke to the Court, off the record.)

THE COURT: You can get off the stand, but you can't talk about the case.

(Whereupon, there was a pause in the proceedings.)

Q Let's keep going through, here.

THE COURT: Not the same way.

MR. SU REZ: Your Honor, may I get through the spreadsheet, and I won't do it for every year. Just, I would like to get through one spreadsheet, as an example.

THE COURT: Fine.

MR. SU REZ: Thank you.

Q The Trump National Golf Club, Hudson Valley. Did you

review every line here?

I couldn't tell you, today, if I looked at every line or I didn't look at every line.

Q For the assets that were on the Statement of Financial Condition, did you draw an understanding as to how they were valued?

Generally. So, I may not have known every asset, but I would have known a significant portion of them.

Q Okay. nd that was possible, without reviewing every line?

Yeah, because it was a lot of -- it was -- let me take it back. The footnotes of the financial statement disclosed certain methodologies that are included, so to that extent, I would have known. I may not have recalled if I looked at every one or not, today.

Q nd would you have looked at every one at the time?

I can't recall, today, what I did in 2015. Or 2016. Whenever the report was issued.

Q But you may have seen some, but not others?

I don't recall today, but I would have definitely seen some, yes.

Q nd there are some that you wouldn't have?

I didn't say that. I don't recall, today, what I look at in 2015, or '16.

Q You don't recall. ll right. So, for all of these

different assets that are -- you would agree that the basis for valuation was disclosed to you?

I would have to look at -- I would say their methodology was disclosed. To the best of my recollection, that would be true.

Q The methodology was disclosed. Okay.

MR. SU REZ: If we can keep scrolling down.

Q The methodology with respect to these assets would have been disclosed to you in the Jeff Supporting Data, from year to year; correct?

To the best of my recollection that -- I believe that is true.

Q Okay.

MR. SU REZ: Keep scrolling. Keep scrolling. Stop.

Q Trump National Golf Club, Charlotte. Would you have seen this information?

I don't recall, today, if I looked at every line in the worksheet.

Q ll right. So it's not your testimony that you looked at every line on this worksheet?

It is not my testimony that I looked at every line in this worksheet.

(Continued on the next page.)

Q Excellent.

My testimony is that I don't recall.

Q You don't recall if you looked at it?

I don't.

Q You may have looked at it and relied --

I don't remember at this moment. I don't think I looked at every line on this spreadsheet.

Q You don't think you looked at every line?

No.

Q Would that be true of the Jeff Supporting Data for each of the different years, you wouldn't have looked at every line on the spreadsheet?

I can't recall today if it would be true every year.

Q Was it your practice to look at every line on the spreadsheet?

I don't recall if I looked at every line every year.

Q You may have looked at some lines and may not have looked at others?

I don't recall today.

Q Did you ever express any disagreement-- did you ever bring up any disagreement on the basis of valuation of any asset?

Yes.

Q Which assets?

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

Original File People v Trump 10-5-2023.txt

Min-U-Script® with Word Index

SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: P RT 37

PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

- against - INDEX # 452564-2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY McCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC; ND SEVEN SPRINGS, LLC,,

Defendants.

October 5, 2023
60 Centre Street
New York, New York 10007

B E F O R E: THE HONOR BLE RTHUR S. ENGORON,
Justice of the Supreme Court

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LIS M. DE CRESCENZO
LIS . C SEY
Senior Court Reporters

THE COURT: So, I understand some members of the press are coming in. Photographers. We are ready. Get your best smile.

(Photographs taken.)

THE COURT: Okay. Let's start, but I'm going to stay off the record for a minute.

(Whereupon, an off-the-record discussion took place.)

D N L D B E N D E R, after having been previously duly sworn, was examined and continued his testimony as follows:

THE COURT: ll right counselor whenever you are ready please proceed.

MR. SU REZ: Thank you your Honor.

CONTINUED CROSS EX MIN TION

BY MR. SU REZ:

Q Mr. Bender, good morning.

Good morning.

Q Did you discuss your testimony with anyone since you left the stand yesterday?

No, sir.

Q Mr. Bender, I would like to show you a document that was previously identified as Exhibit D 950.

(Whereupon, a document was displayed, and handed to the witness.)

Q It's an audit guide for personal financial statements.

Do you recognize that document?

MR. SU REZ: Can we turn to the second page?

Q It's an audit and accounting guide; right?

Second page?

Q Yes. Do you see where it says, Personal financial statement audit guide?

Okay. This copy doesn't -- it's on the third page. Yes. Yes, sir.

Q Is this a document that you would have reviewed, prior to preparing a compilation report for the Statements of Financial Condition for President Donald Trump?

I may not have reviewed it every year, but I probably have seen it, in my career.

Q You have probably seen it?

Yes.

Q nd the audit guide for personal financial statements published by the merican Institute of Certified Public accountants is this something that you would have endeavored to make yourself familiar with, prior to preparing compilation reports for President Trump's Statements of Financial Condition?

I was familiar with standard, at the time I prepared -- I compiled Mr. Trump's personal financial statements.

Q Sitting here today, do you have a recollection of having reviewed this audit guide prior to preparing compilation

reports for the president's Statement of Financial Condition?
I have no independent memory of when I -- if I did it, at that time.
MR. W LL CE: We would like to just renew our objection to this exhibit, which, the first time I objected to this coming in -- it's been superseded. It was not in place at the time of 2011, or any engagement going forward.
THE COURT: Well, I have a more fundamental issue. It says, blah, blah, blah, udit guide. There was no audit here.
MR. SU REZ: Your Honor, I'm more than happy to respond with two comments. Number one, I'm simply trying to establish if Mr. Bender has looked at it or relied upon it; and number two is, it does, in fact, address the compilation standards within the guide. compilation is a form of attestation, like an auditor review. I know your Honor --
THE COURT: Okay. You have answered my objection. I'll overrule the plaintiff's objection.
MR. SU REZ: Thank you.
I would like to move Exhibit D 950 into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, Defendant's Exhibit 950 was received in evidence.)
Q Mr. Bender, is this a document that you looked at,

prior to doing the compilation reports? Yes or no?
I looked at it, but I may not have looked at it every year.
Q You may not have looked at it every year. Did you look at it prior to 2011?
I don't have any independent memory of which years I looked at it.
Q Okay. Would you have relied on the audit guide?
It would have been something that we would have -- we would have, with help of members of Mazars, we would have used to rely on to compile the personal financial statements, as applicable.
Q This is something that would have been from Mazars' library?
I don't know if we had libraries in those days, anymore, but it would have been available online.
Q In the online collection of reference materials, Mr. Bender?
We would have to check that, specifically.
Q You wouldn't be sure?
I don't remember how things worked, back then.
Q Okay. Mr. Bender, if you could please turn to page 9 of this document? nd that's 9 of the compilation guide. It might not be the ninth page that's right in front of you.
MR. SU REZ: Keep going.

Q Chapter two. Do you see where this document reads, compilation of financial statements?
Yes, sir.
Q ll right. Do you see, in section 2.03, in the second line, where it says, " t a minimum, however the accountant should obtain an understanding of the methods by which the individual determined estimated current values of significant assets, and the estimated current amounts of significant liabilities, and consider whether the methods are appropriate, in light of the nature of each asset or liability?"
Yes, sir.
Q Okay.
MR. SU REZ: I would like to pull up Plaintiff's Exhibit 786.
I'm sorry. 787.
(Whereupon, a document was displayed.)
Q Mr. Bender, you would agree that this is a Statement of Financial Condition for the year ending June 30, 2011?
I'm just waiting for him to give it to me.
(Whereupon, a document was handed to the witness.)
Yes, sir.
Q Did the 2011 Statement of Financial Condition disclose the method used to determine the value of each asset?
I believe it did.

Q Yes or no, Mr. Bender.
I would have to read the whole statement.
Yes, I do believe it did.
Q So that's a yes; right?
I believe so.
Q The 2011 Statement of Financial Condition disclosed the method used to determine the amount of each liability; correct?
Yes, sir.
THE COURT: Let me just interrupt a second. I often say, If you are asked -- to the witness, directed to witnesses -- If you are asked a yes or no question, answer it yes or no unless you can't, in which case, "I believe," "I think so," is acceptable, if that's the truthful answer.
Q The 2011 Statement of Financial Condition did not present any asset or liability of an obviously inappropriate value or amount, Mr. Bender; is that correct?
t the time of the compilation procedures, we were not aware of any potential inappropriate valuations.
MR. SU REZ: Your Honor, that's not the question. I want to be mindful of the instructions you just gave us, but that's not the question that I asked, and I understand if the witness wishes to qualify a yes or a no, I have no problem with that, but the question was whether it presents

and asset or liability at an obviously inappropriate value or amount. Mr. Bender produced the compilation report.

THE COURT: I agree with you. Okay.

So, do you want to read back; you want to just ask it one more time? Up to you.

Q Mr. Bender, did the 2011 Statement of Financial Condition present any asset or liability at an obviously inappropriate value or amount?

Not at the time we issued the compilation report.

Q Did the compilation report change, after you issued it?

No, sir.

Q Mr. Bender, if you could, please turn to Plaintiff's Exhibit 815?

re we finished with these?

Q You can set it aside.

Thank you.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, the 2012 Statement of Financial Condition is on the screen; correct?

Yes, sir.

Q nd the 2012 Statement of Financial Condition disclosed the method used to determine the value of each asset; correct?

Yes, sir. I believe so.

Q nd the 2012 Statement of Financial Condition disclosed the method used to determine the amount of each liability correct; sir?

Yes. Yes, I believe so.

Q nd the 2012 Statement of Financial Condition did not present any asset or liability at an obviously inappropriate value or amount; correct, Mr. Bender?

That is correct as of the date, at the time we issued the compilation report. Report. Yes. Report.

Q nd the 2012 compilation report did not change, after it was issued; correct.

We did not change the report.

Q nd the 2012 Statement of Financial Condition did not change after it was issued; correct?

Mazars did not recall the statement -- let me take that back. The report did not change.

Q Did the statement change?

The statement did not change.

Q Because the report traveled with the statement; correct?

Yes, sir.

Q ll right. Let's turn to Plaintiff's Exhibit 707.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, is this the Statement of Financial Condition for the year ending June 30, 2013, of President Donald J. Trump?

This is the compilation of Donald J. Trump's Statement of Financial Condition as of June 30, 2013.

Q The first page includes your compilation report; correct, Mr. Bender.

The first page?

Q Second page, after the cover. The first page of the document.

Includes Mazars independent accountant's compilation report. Yes, sir.

Q Okay. nd the 2013 Statement of Financial Condition, Mr. Bender, disclosed the methods used to determine the value of each asset; correct?

I believe so.

Q You believe that?

Yes. I'm sorry. I left the word "yes" out.

Q nd the 2012 Statement of Financial Condition, Mr. Bender, disclosed the method used to determine the amount of each liability; correct?

Yes. I believe so.

MR. W LL CE: I'm just going to note an objection to that question, because he said 2012.

I'm also just going to note an objection to this

as cumulative. We covered this ground yesterday, and if we are just going to go through, year-by-year, to get the same answer, this is exactly the issue we objected to yesterday.

THE COURT: nd I'm not going to change the ruling I made in the sidebar, but I accept the premise of it.

Mr. Suarez, how long do you think you will need, to finish cross examining this witness?

MR. SU REZ: Your Honor, I've formulated, following your Honor's direction, last night --

THE COURT: ll I did was ask you how long. How long?

MR. SU REZ: I believe I can be done within the next hour and a half.

THE COURT: Plaintiff?

MR. W LL CE: I would like it to be faster, but if that is a hard cap, I would just as soon move along.

THE COURT: ll right. In my discretion, you have an hour and a half. Until noon, basically. nd then, whatever it is. nd, if you want, you can finish earlier.

MR. SU REZ: Understood.

MR. ROBERT: s we discussed yesterday, your Honor, I have about ten minutes or so.

THE COURT: Okay.

MR. SU REZ: Thank you for clarifying.

MR. MER: I am also suggesting that if there's some way that we can say, If I asked you the same questions with respect to the statements from 2013 to 2020 that I just asked you on the statements for 2011 and 2012, would your answers be the same, I mean maybe we can get there a little sooner.

THE COURT: That's sustained, as a suggestion. Yes.

MR. SU REZ: nd I did follow your direction. I'm down to three or four questions, per statement. I'm moving quickly.

THE COURT: Okay.

Q Mr. Bender, with respect to the 2013 Statement of Financial Condition, is it correct that it disclosed the method used to determine the amount of each liability?

Yes. I believe it is so.

Q Mr. Bender the 2013 Statement of Financial Condition did not present any asset or liability at an obviously inappropriate value or amount; correct?

Not as of the date that we issued the compilation report, independent compilation report.

Q nd Exhibit 707 did not change after it was issued; correct?

It did not change, sir.

Q Moving to Exhibit 730, Mr. Bender.

(Whereupon, a document was displayed, and handed to the witness.)

Q Is this the Statement of Financial Condition dated June 30, 2014, of Donald J. Trump?

Give me a second, please.

Yes, sir. It is.

Q nd Mr. Bender, the 2014 Statement of Financial Condition disclosed the method used to determine the value of each asset; correct?

Yes. I believe so.

Q The 2014 Statement of Financial Condition disclosed the method used to determine the amount of each liability; correct?

Yes. I believe so.

Q The 2014 Statement of Financial Condition did not present any asset or liability at an obviously inappropriate value or amount; correct?

Not as of the date we issued our independent compilation report.

Q nd Mr. Bender, Exhibit 730 did not change after it was issued; correct?

No, sir.

Q Moving on to Plaintiff's Exhibit 729.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, is this the Statement of Financial Condition of President Donald J. Trump for the year ending June 30, 2015?

This is the compilation of the Donald J. Trump Statement of Financial Condition, as of June 30, 2015.

Q The 2015 Statement of Financial Condition disclosed the method used to determine the value of each asset; correct?

Yes. I believe so.

Q The 2015 Statement of Financial Condition disclosed the method used to determine the amount of each liability; correct?

Yes. I believe so.

Q The 2015 Statement of Financial Condition did not present any asset or liability at an obviously inappropriate value or amount; correct?

Not as of the date the independent compilation report was issued.

Q Did Exhibit -- did Plaintiff's Exhibit 729 change, after it was issued?

No, sir.

Q Thank you. Moving on to Plaintiff's Exhibit 756.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mr. Bender, do you recognize Plaintiff's 756 as the Statement of Financial Condition of Donald J. Trump for the year

ending --

MR. W LL CE: Objection, at this point. disclaimer. Mr. Bender viewed and identified it previously, and it was entered into evidence. I think we can just say what the document is that he has identified, and ask questions. I don't know that he needs to review it and identify it again.

THE COURT: No need to reinvent the wheel.

MR. SU REZ: If there's an easier way to do it, I'm happy to do it, your Honor. Just for the witness's benefit.

MR. MER: I thought I suggested an easier way that the judge sustained as a suggestion. Why can't we do that?

THE COURT: I'm torn. On the one hand, it is deja vu all over again. On the other hand, I gave him an hour and a half. So, let's try not to go over the same ground that we have already gone over, and any way you can think to save time, please do it.

MR. SU REZ: We are already halfway through, your Honor.

(Continued on the next page.)

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THE COURT: Objection. Overruled without prejudice.
Yes, sir. What was your question?
Q I believe my question was whether it was a Statement of Financial Condition of President Donald J. Trump for the year ending June 30, 2016?
This is the accountant's compilation of Donald J. Trump's Statement of Financial Condition as of June 30, 2016.
Q The 2016 Statements of Financial Condition disclosed the method used to determine the value of each asset, correct, Mr. Bender?
Yes, I believe so.
Q The 2016 Statement of Financial Condition disclosed the method used to determine the amount of each liability, correct?
Yes.
Q The 2016 Statement of Financial Condition did not present any asset or liability at an obviously inappropriate amount right, Mr. Bender? Correct?
Not as of the date the Independent Compilation Report was issued.
Q Plaintiff's Exhibit 756 did not change after it was issued, Mr. Bender?
No, sir. It did not.
Q Moving on to Plaintiff's Exhibit 755. Do you

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recognize this document, Mr. Bender?
Yes, sir.
Q Is this the 2017 Statements of Financial Condition of President Donald John Trump?
This is the compilation of Donald J. Trump's Statement of Financial Condition as of June 30, 2017.
Q The 2017 Statement of Financial Condition disclosed the method used to determine the value of each asset, correct, Mr. Bender?
Yes, I believe so.
Q The 2017 Statement of Financial Condition disclosed the method used to determine the amount of each liability, correct, Mr. Bender?
Yes, I believe so.
Q The 2017 Statement of Financial Condition did not present any asset or liability at an obviously inappropriate value or amount, correct, Mr. Bender?
Not as of the date the Independent Compilation Report was issued.
Q Did Plaintiff's Exhibit 755 change after it was issued?
No, sir.
Q Moving on to Plaintiff's Exhibit 773. Do you recognize this document, Mr. Bender?
Yes, sir.

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Q Is this the 2018 Statement of Financial Condition of President Donald John Trump?
This is the Independent Compilation Report for Donald J. Trump's Statement of Financial Condition as of June 30, 2018.
Q Does the 2018 Statement of Financial Condition disclose the method used to determine the value of each asset, Mr. Bender?
Yes, I believe so.
Q Does the 2018 Statement of Financial Condition disclose the method used to determine the amount of each liability, Mr. Bender?
Yes, I believe so.
Q Does the 2018 Statement of Financial Condition not present any asset or liability at an obviously inappropriate value or amount?
s of the date the Independent Compilation Report was issued, that is correct.
Q nd Plaintiff's Exhibit 773 has not changed since it was issued, correct?
No, sir.
Q Moving on to Plaintiff's Exhibit 842. Do you recognize this document, Mr. Bender?
Yes, I do.
Q Is it the Statement of Financial Condition for Donald

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J. Trump for the year ending June 30, 2019?
The first question is yes, I do. What was the second question?
Q Is this the Statement of Financial Condition for President Donald J. Trump for the year ending June 30, 2019?
This is the compilation of Donald J. Trump's Statement of Financial Condition as of June 30, 2019.
Q Does the 2019 disclose-- excuse me. Withdrawn.
Does the 2019 Statement of Financial Condition disclose the method used to determine the value of each asset, Mr. Bender?
Yes, I believe so.
Q Does the 2019 Statement of Financial Condition disclose the method used to determine the amount of each liability, Mr. Bender?
Yes, I believe so.
Q Does the 2019 Statement of Financial Condition not present any asset or liability at an obviously inappropriate value or amount?
s of the date of the Independent Compilation Report was issued, yes, that is correct.
Q Yes, it's correct that it does not present any asset or liability at an obviously inappropriate value or amount correct?
s of the date of the Independent Compilation

Report.
Q Plaintiff's Exhibit 842 did not change after it was issued?
No, sir. It did not.
Q Okay. Moving on to 2020. Plaintiff's Exhibit 856. Do you recognize this document, Mr. Bender?
Yes, sir.
Q Is this the Statement of Financial Condition for President Donald J. Trump for the year ending June 30, 2020?
This is the Compilation Report of Donald J. Trump's Statement of Financial Condition as of June 30, 2020.
Q Does the 2020 Statement of Financial Condition disclose the method used to determine the value of each asset, Mr. Bender?
Yes, I believe so.
Q Does the 2020 Statement of Financial Condition disclose the method used to determine the amount of each liability, Mr. Bender?
Yes, I believe so.
Q Does the 2020 Statement of Financial Condition not present any asset or liability at an obviously inappropriate value or amount?
s of the date the Independent Compilation Report was issued, that is correct.
Q Exhibit -- Plaintiff's Exhibit 856 did not change

after it was issued, correct?
No, sir, it did not.
Q Mr. Bender, you never spoke with Eric Trump about his father's Statement of Financial Condition, correct?
I may have had -- nothing with the actual compilation of the report.
Q What does that mean?
I may have had a side conversation with him once about something. I don't recall.
Q You don't recall?
Yes.
Q Is there any conversation you do recall having with Eric Trump about his father's Statement of Financial Condition?
There was one conversation in a conference room about one asset once but I don't recall what it was. Many years ago, I believe.
Q How many years ago, Mr. Bender?
I know within the last ten years.
Q Within the last ten years?
Yes.
Q ll right. Can we bring up-- do you recall having a discussion with me about this at your deposition, Mr. Bender?
I do not recall that.
Q Would it be helpful to refresh your recollection if I

showed you a clip from your deposition transcript?
You can show me a clip.
MR. SU REZ: Please play transcript 237, page 237 line 7 to 238 line 18.
(Video played.)
Q Why is it that you have any better recollection today, Mr. Bender?
I remember one conversation maybe when he asked me a question in the conference room once about an asset but I don't remember which asset it was. It wasn't the actual preparation, but, I do remember one question one time.
Q Mr. Eric Trump asked you a question?
There was one conversation for a minute or two. I don't remember what it was about.
Q You responded to Mr. Eric Trump's question?
The issue was resolved. I don't remember what the issue was.
Q Whatever the issue was, it was resolved to your satisfaction?
Yes, sir.
Q n issue that you can't remember what it was?
Yes, sir.
Q Mr. Bender, did you ever speak with Donald Trump, Jr. about his Statement of Financial Condition?
Not that I recall.

Q Mr. Bender, you never spoke with Ivanka Trump about her father's Statement of Financial Condition, correct, Mr. Bender?
Not that I recall.
Q Mr. Bender, in fact, with respect to Ms. Trump, are you aware she invested over $7.5 million under the terms of a lease into penthouse 20 at the Trump Park venue?
Say that again, please.
Q re you aware of Ms. Trump, Ms. Ivanka Trump ever invested $7.5 million under the terms of the lease into penthouse 20 at the Trump Park venue?
MR. W LL CE: Objection.
THE COURT: Ground?
MR. W LL CE: No foundation for that question.
THE COURT: I don't think the way it's worded needs a foundation. Let's just get an answer. Go ahead.
I don't recall.
Q Mr. Bender, you described Mr. McConney, several times, as someone for whom you have a tremendous amount of respect?
I said he was a good accountant.
Q Do you have a tremendous amount of respect for Mr. Bender?
THE COURT: For Mr.?
MR. SU REZ: I'm sorry.

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Q For Mr. McConney?
Not really, no.
Q Do you recall your testimony from Monday?
I do not.
MR. SU REZ: I'd like to bring that up, if I may use it to refresh the witness's recollection, your Honor. Your Honor, may I have a second?
THE COURT: Sure.
(Brief pause.)
MR. SU REZ: I apologize. We're having technical difficulties.
THE COURT: These things happen but it's part of your hour and a half.
MR. SU REZ: I understand.
Q I apologize. October 3rd, it was Tuesday. You say, Mr. Bender, where I asked you:
"You and Mr. McConney were close friends at one point; were you not."
You said: "We didn't have a relationship outside of work but we get long well."
I said: "You got along well?"
nd you said: "I had a tremendous respect for him. He is a very good accountant."
That's past tense. You asked me if I have tremendous respect today.

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Q You lost your respect for Mr. McConney?
It's a little different today than it was back when we were younger.
Q When you were younger?
When I had hair and he had hair too, and, his hair was blond back then, not white.
Q Is that Mr., Bender, because-- withdrawn.
Did you ask Mr. McConney to provide you everything that he had relied upon in coming up with the supporting data for the Statements of Financial Condition?
He was supposed to get us all information that he had to -- he was giving us a full package of what he thought was necessary.
Q Of what he thought was necessary?
He gave us all his supporting data.
Q His supporting data for things he used to prepare the Statement of Financial Condition supporting data, correct?
Say that again, please.
Q Information that he used to prepare the supporting data spreadsheets?
Yes, and, I'd ask for supplemental things, like appraisals, that we previously discussed, if any.
Q Did he ask you to provide you things that he didn't use in preparing the Statement of Financial Condition?
Say that again, please.

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Q Did he-- withdrawn.
Did you ask Mr. McConney to provide you with things that he didn't use in preparing his supporting data spreadsheets?
MR. W LL CE: Objection. sked and answered.
THE COURT: It's a strange question. Can you read back that question? Maybe I missed something.
(Read back.)
THE COURT: Well, again, I'm not an accountant but I don't know why you'd ask for things he didn't use. You'd ask for things he did use.
MR. SU REZ: If it's that he didn't ask him, then he didn't ask him to give him things he didn't use.
THE COURT: I'm overruling the objection. I'm just telling you how I see things.
I did ask him for things like appraisals that he did not use.
Q You asked him?
From-- not in every year, as I previously testified. I did ask a number of years for appraisals.
Q The only thing you asked him to produce to you, to send you, were appraisals that he didn't use in preparing the Statement of Financial Condition; is that correct?
That is the only thing I can recall at this time.
Q That is the only thing you can recall. The only

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thing you can recall.
You never sent Mr. McConney an e-mail?
I don't recall.
Q You never sent Mr. McConney an e-mail asking him to send you every appraisal, correct?
I never sent him an e-mail asking for every appraisal, no, sir. To the best of my recollection, no.

(Continued on the following page..)

Q Did you send him an email saying, I never asked, please send me every appraisal you didn't use in preparing your supporting data?
No, sir.
Q Did you send him a text message asking him to send you every appraisal he didn't use in preparing his supporting data?
I don't use text that much. No, sir.
Q Did you ever send him an email asking him to send you any appraisals?
I don't recall.
Q Did you ever ask him to provide you with appraisals in the presence of anyone else?
I don't recall.
Q Did you ever ask him to send you any appraisals in writing?
Can you clarify that question, please?
Q Did you ever ask Jeff McConney to send you any appraisals in writing?
In writing?
Q Did you ever write Mr. McConney and say, Please send me any appraisals?
Not that I recall.
Q Not that you recall.
Did you ever have this discussion with Mr. McConney asking him to provide you with appraisals he didn't use, while

anyone else was present?
I don't recall.
Q You knew that the Trump Organization had appraisals in their possession; correct?
Not necessarily.
Q You had no idea that the Trump Organization had appraisals in his possession?
I knew there were certain appraisals that had been given. I don't recall any other appraisals that I --
Q re you familiar with the real estate industry?
Somewhat.
Q Somewhat. You are not an expert in real estate; right?
I'm a real estate accountant.
Q real estate accountant?
mongst other areas.
Q nd a real estate accountant couldn't be expected to know that a company that owns massive amounts of real estate would have appraisals in its files?
I asked for, if they have any appraisals.
Q You asked?
Yes.
Q In passing?
s a question.
Q Did you ever make that request, in writing?

No, sir.
Q Was that an important thing for you to look at?
Say that again, please.
Q Were appraisals an important thing for you to look at?
I would have liked to have had all information available.
Q Okay. You knew that the Trump Organization had loans on its books; correct?
Yes, sir.
Q nd you knew that those loans were backed by real estate, right; Mr. Bender?
Many of them.
Q Many of them. nd you knew that you typically, in real estate, can't get a loan backed by real estate if there's no appraisal that the bank orders; right?
That is sometimes correct, yes.
Q Okay. So you would have known that the Trump Organization had appraisals in its records?
I didn't know that the Trump Organization had access to any appraisals the banks had.
Q It's not a staggering concept to understand that a company that owns insane amounts of real estate all over the world had appraisals in its books?
I didn't know the Trump Organization had any access to appraisals they did not give me.

Q Okay. nd how many appraisals did the Trump Organization give you, Mr. Bender?
I don't recall.
Q You don't recall. Do you remember on Monday when you talked about learning that there were appraisals that you didn't know about after meeting with the District ttorney of New York?
Say that again, please?
Q Do you recall on Monday what you testified in response to a question from Mr. Wallace about first learning that the Trump Organization had appraisals that you didn't know about, when you met with the District ttorney of New York?
Not particularly. That's what I said.
Q I'm sorry?
Not particularly.
Q You don't recall your testimony, or you don't recall learning that from the District ttorney of New York?
I don't remember my exact testimony.
Q You don't recall your exact testimony --
MR. SU REZ: This is what happens when I try to go fast.
Q nd you generally remember testifying on Monday that in your meeting with the District ttorney of New York, you learned, or you testified that that was when you learned, that the Trump Organization had appraisals that you hadn't seen?
Yes. That, I do recall.

Q Okay. nd that, just so I understand your testimony Mr. Bender, that was the first time you learned that the Trump Organization had appraisals that it hadn't given you?
Yes, sir.
Q Okay. nd you couldn't really remember what year that meeting took place; is that right?
The first meeting with the District ttorney?
Q Yeah.
I believe of was in the spring of -- that was 20 -- the last time -- I believe it was in the spring of '21.
Q Okay. nd you remembered having a Zoom meeting with him, and that's when he showed you these appraisals?
It was. It was a Zoom -- we were on Zoom with the District ttorney, so this is the first time -- I don't know if we were saw them physically, but this was the first time I was informed of it.
Q nd then all of a sudden, you remember having made a request, back in 2013, that appraisals -- that you had made a request for appraisals from Mr. McConney; is that right, Mr. Bender?
No, sir. I remember it because I requested it.
Q You remembered that, over a number of years. Did you ask in 2013?
I don't remember specifically which years, but I know I asked the question numerous sometimes.

Q Oh you asked the question numerous times?
Most of my years I did ask, yes. nd starting around, I believe -- I thought I testified yesterday -- when we -- the appraisals first appeared for TIHT Commercial, LLC or Trump Plaza, LLC, I asked -- that's when I starting asking, Do you have any other appraisals.
Q nd that's when you first learned that the Trump Organization had access to appraisals?
Say that again, please?
Q That is what you first learned that the Trump Organization had access to appraisals?
That's the first time that it came to my attention, during the compilation procedure, that I asked the question.
Q You told me at one point that you were the head of the Long Island Real Estate Group for Mazars; is that correct?
Yes, sir.
Q The Long Island Real Estate Group for a big fancy accounting firm and you didn't know that a real estate developer would have appraisals on its real estate available to them?
I asked the client the question. They made a representation. They gave it to me, and they told me they didn't have any other appraisals.
Q You asked -- well, your testimony is that you made a request to Mr. McConney that was never documented.
I asked them for appraisals -- let me finish. I

asked. The representation letter said that they gave me all relevant -- whatever we pulled. I don't want to say what the representation letter said, off the top of my head. We can bring one up. But they represented they gave me everything I needed.
Q The representation letter that you drafted, and didn't request appraisals?
The representation letter asked for all relevant data. We can get the exact language, if you would like to.
Q nd do you think, Mr. Bender, that all relevant data includes things that people don't rely on, in preparing documents? Is that relevant data?
I felt -- yes, I do.
Q Okay. So, the head of the Long Island Real Estate Practice Group at Mazars, the big fancy accounting firm that the president hired to compile their Statements of Financial Condition, thinks that it's relevant to review appraisals that weren't relied on in preparing spreadsheets, but never puts it in writing, doesn't put it as part of his representation letter that he drafted for his client of 30 years to sign, and all of a sudden this becomes an issue when you are in front of the District ttorney?
No, sir. I asked them, at the time.
Q Oh. t the time. Never followed up. Never said to Weisselberg, Hey, send your appraisals. Never sent the

president an email saying, Hey, I don't have a single appraisal for your massive, giant real estate holding company that we have done over 280 engagements for, that you prepare tax returns, that you know have books and records and loans, it never crossed your mind that is an entity that could have appraisals?
MR. W LL CE: Objection to form.
THE COURT: That's not what he's testifying to. Objection sustained.
Q Mr. Bender, did the District ttorney of New York threaten you with prosecution?
No, they did not.
Q Did they threaten Mazars with prosecution?
Not to my knowledge.
Q Do you know that Mr. Pomerantz, the gentlemen that you met with when you met with the district attorney, put in his book that Mazars sent you there to meet without your own lawyer?
You informed me of that.
Q Yes. nd is that the case, that Mazars sent you in there to meet with the District ttorney of New York without your own lawyer?
I had counsel with me.
Q Counsel from Mazars?
I believe they were my counsel.
Q You thought Mazars lawyers were your lawyers?
I had my own counsel.

Q Okay. From Mazars?
Mazars and I had counsel.
Q So is Mr. Pomerantz lying, in his book?
I never saw Mr. Pomerantz's book, but --
Q Okay.
Let me finish. I had counsel with me, and I was satisfied that I had appropriate counsel at all times.
Q nd was that when Mr. Pomerantz informed Mazars of the precarious legal position that they were in, if they didn't play ball?
I have no knowledge of that.
Q You have no knowledge of that. The lawyers Mazars provided you when they met with the District ttorney told you nothing about that?
I have no knowledge of that.
Q Okay. nd it was in this meeting when, all of a sudden, it dawns on you that you had made a request for appraisals?
No, sir. I knew I had made the request, beforehand.
Q Right. nd you never got it?
Never received it. Requesting additional -- when the question came up, Do you have any official appraisals to give me, they never supplied me with any additional appraisals.
Q Mr. Bender, in the last three days, Monday, Tuesday, Wednesday, you testified, "I don't know," or, "I don't

remember," over 89 times in response to questions, both from me and Mr. Wallace.
Mr. who?
Q Wallace.
Okay. Sorry. My apologies.
THE COURT: It was his birthday yesterday.
THE WITNESS: Mr. Wallace's birthday?
MR. W LL CE: The nightmare continues.
THE WITNESS: Happy birthday.
Q But that, you do remember?
What was the question again, please?
Q You do remember requesting appraisals from Mr. McConney?
Numerous times. Yes, sir.
Q Numerous times. Numerous times, and you never received them?
I never received any -- I did not receive any additional appraisals, that they didn't supply as part of his package.
Q nd you said, Oh, okay. The Trump Organization must not have appraisals.
THE COURT: That's not his testimony.
Q Did you conclude that the Trump Organization didn't have appraisals?
I didn't need to make a conclusion. I asked the

question; they gave me an answer; and they made representations that they gave me all relevant data.
Q Okay. nd in your --
I don't know the exact words. We can pull it up on the screen.
Q We are happy to pull them up.
In your mind, relevant data is documents that you didn't rely on?
We can pull it up.
Q Okay. Mr. Bender, I have to ask you the question, are there any mental health reasons that you can't testify here today?
No, sir.
MR. W LL CE: Objection.
THE COURT: Overruled.
Q Let me show you Defendant's Exhibit 729.
(Whereupon, a document was displayed, and handed to the witness.)
Do you want me to read this?
Q Have you seen it before?
I have to read it.
Q Okay.
(Whereupon, there was a pause in the proceedings.)
Q I can draw your attention to the specific part of the

document I intend to ask you about. On page two of the document, a document prepared by Mazars and sent to the Trump Organization concerning the transition away from Mazars to a new accounting firm.
MR. W LL CE: Just, objection. What is the basis for that? I'm just not familiar with the basis for the statement that this was drafted on Mazars and to the Trump Organization.
THE COURT: Well, I'll give counsel a little leeway.
So, where we are going?
Q It talks about Mazars' transition being contingent on the physical and mental health of Donald Bender.
I see that.
Q Okay. Did you disclose to Mazars that you had a mental health condition that precluded them from terminating -- from continuing their transition to a new accounting entity?
No, sir.
Q Then why would Mazars imply to us, to the Trump Organization, that your mental health was a consideration in whether they could continue to transition and comply with their professional obligations in assisting to transitioning to a new accounting firm?
MR. W LL CE: Objection to the implication part.
THE COURT: Overruled.

You would have to ask Mazars.
Q Okay. Was there ever a physical or mental condition that should have been disclosed to the Trump Organization?
ny health issues I had, they were aware of.
Q The Trump Organization was aware?
Mr. Weisselberg knew I had certain health issues, over the years, but nothing serious.
Q Okay. So you discussed your personal health issues with Mr. Weisselberg?
We had some common health issues over the years.
Q Okay. But you never said to Mr. Weisselberg, someone that you could talk to about your health issues, you never said to him, Let me see your appraisals?
I don't recall if I ever asked Mr. Weisselberg for his appraisals.
Q ll right. I'm sorry?
I don't recall if I spoke to Mr. Weisselberg about appraisals.
Q Okay. You don't recall, you don't recall, you don't recall.
So, for specific questions you don't recall, other than you do remember, you do recall, asking Jeff McConney for an appraisal, but everyone else, you don't recall anything else --
MR. SU REZ: Withdrawn.
Q Is there any reason here, based on this document that

we received from Mazars, that your testimony shouldn't be relied on because of your mental or physical health?
This memo was drafted by Mazars, no, I have no physical or mental health issues that you have to be worried about, today.
Q You disclosed no physical or mental health issues to Mazars?
I have had some health issues, and Mazars is aware of them, and nothing serious?
Q Did any of them impair your ability to do your job for the Trump Organization, Mr. Bender?
My physical issues have been the last few months, and they were resolved within two weeks.
Q nd were there any mental health issues that challenged your memory when you conducted your engagements for the Trump Organization?
No, sir.
Q Okay. That, you do recall; correct?
I have no mental health issues.
MR. SU REZ: No further questions on cross examination, your Honor.
THE COURT: Thank you. Will there be --
MR. ROBERT: Me, sir.
THE COURT: That's right. You wanted ten minutes, I believe.

MR. ROBERT: May I proceed, your Honor?
THE COURT: Please proceed.
CROSS-EX MIN TION
BY MR. ROBERT:
Q Good morning, Mr. Bender. It's still morning?
Good morning.
Q So, in order to-- when I was sitting there yesterday I had a little bit of difficulty hearing you. So, what I'm going to ask you to do is speak into the mic, and, following the Judge's admonition, or statement, a while ago, I'm going to ask you to give me yes or no answers to my questions.
To the extent you feel you can't, I know the Judge said you can say it's not able to be answered. So, ask me, and, I'll be happy to rephrase the question so we can have a dialogue and it's easier for the reporter to write it down. Fair enough, sir?
We'll do our best.
Q So, over the last couple of days where Mr. Suarez left off --
THE COURT: Wait a minute. That was supposed to be a yes or no question.
MR. ROBERT: I'm starting out that way. It's going to wind up with a yes or no, I promise.
Q In Mr. Suarez's last few minutes of his questioning of you, he brought to your attention, correct, that over the

last few days you answered "I don't know" and "I don't recall" approximately 90 times.
Do you remember that?
I believe he said 89, but you can check the court record.
Q So, that you remember, and I'm glad you do. You're an accountant, and I'm a lawyer. So, you're good with numbers. So, about 89 times, right?
I believe that's what he said.
Q Okay. Do you recall a couple of days ago, actually Wednesday morning, which would have been yesterday morning, Mr. Suarez asked you the following:
"Question: Did your counsel speak to anyone from the New York ttorney General's Office?"
You said:
" nswer: You have to speak with them."
Then the question was:
" re you aware if your counsel spoke to anyone from the New York ttorney General's Office?
" nswer: I don't recall any conversation with counsel last night.
So, is your testimony that when you were here yesterday morning testifying, you don't remember if you had a conversation with your counsel the night before?
Say that again, please.

Q Yesterday morning you testified that you couldn't recall if you had a conversation with your counsel Tuesday night.

So, you don't remember yesterday morning whether your lawyer spoke with the ttorney General Tuesday night?

I don't remember Wednesday morning if I had a consult Tuesday night? I do not know what conversations my client -- my counsel had -- my counsel had with the ttorney General.

Q Did you speak to your lawyer Tuesday night, yes or no? I don't want to know the contents of it, but, did you speak with your lawyer Tuesday night?

I believe I did.

Q s you sit here today, on Thursday morning, you don't remember if, on Tuesday night, after your first day of testimony, you spoke could your lawyer; is that your testimony?

Say that again, please.

Q Is it your testimony, as you sit here today, on Thursday morning, that you don't remember if on Tuesday night you spoke to your lawyer or not?

I spoke to my lawyer because they wanted --

Q Don't tell me what you spoke about, please.

You're right.

Q Now, you remember you spoke to him Tuesday night?

Yes.

Q Did you speak to him last night?

Yes.

Q Do you know if he spoke to the ttorney General last night?

I do not know.

Q During the course of Mr. Suarez's examination of you, you said that during the course of your engagement for the Trump Organization there were two or three times that you had a question about how they were handling certain G P issues in the Statement of Financial Condition.

Do you remember that?

No, I do not remember that being my testimony. I believe, if we're talking about the same matter, I believe there were two or three times where we discussed G P exceptions.

Q There were two or three times, during the course of your engagement, where you discussed G P exceptions, correct? Yes or no?

There were two or three times where we discussed it, newer G P exceptions. I believe my testimony was two times, not three times.

Q So, there were two times you talked to the Trump Organization about issues of G P exceptions, correct?

That's all I recall at this moment.

Q That is all you recall at this moment, that there were two times, correct?

That is all I can recall right now.

Q Will you agree with me G P exceptions are an important part of a Statement of Financial Condition?

Yes, sir.

Q s a matter of fact, at the beginning of the Statement of Financial Condition is where it's listed what those G P exceptions are, correct?

Yes, sir.

Q nd I know you testified you're --

Let's take it back. There are two or three times where I discussed new G P exceptions with him.

Q New G P exceptions and every time you had a conversation, the Trump Organization agreed with what your assessment was and either-- it changed the G P exceptions to reflect something that you and Mazars were comfortable with, correct?

Yes, sir.

Q So, every time you, as the accountant, go to the Trump Organization, you have a discussion about a concern you have about G P, they comply with what you're suggesting, correct?

It's a simple question, sir. Please.

We came to a --

MR. ROBERT: Your Honor, please.

THE COURT: I believe it's capable of a yes or no.

Yes.

Q Yes. Then the period of those times, you were the partner in charge of the Statement of Financial Condition project, correct?

I was a partner in charge of the compilation, yes.

Q Okay. We talked about, or Mr. Suarez talked to you the other day about SC 274. You remember that?

I don't remember the exact questions, no, sir.

Q Do you remember that the words SC 274 were discussed over the last few days?

Yes.

Q I'll be honest with you, before this trial, I would have thought it was a motor oil. I wouldn't have known it has anything to do with accounting, but, you know SC 274 has to do with accounting, correct?

Yes, sir.

Q I think your testimony was if you had specific questions about it, you'd go next door or talk to somebody else at Mazars, correct?

Yes, sir.

Q Can we at least agree you have the requisite knowledge and experience and training to know that SC 274 is

the governing principles behind what needs to be in a Statement of Financial Condition?
Would you agree with that?
t the time I was doing the engagement, I had the appropriate knowledge, correct.
Q So --
THE COURT: Wait a minute. That didn't answer the question.
MR. ROBERT: Can we have the question read back?
THE COURT: Please read back and listen carefully.
MR. ROBERT: Thank you.
(Read back.)
Yes, sir.
Q Okay. During the time that you were in charge of the Statement of Financial Condition assignment from-- on behalf of Mazars for the Trump Organization, you had that knowledge, correct?
Yes.
Q To the extent you had specific questions about it, you would go to other people within Mazars to ask specific questions, correct?
Yes, sir.
Q That you remember, correct?
Yes, sir.

Q Okay. But as you sit here today, you also remember now that you asked Jeff McConney every year for appraisals; is that what your testimony is?
I said most years.
Q So --
Started in, approximately, I believe, you can check my testimony. I thought I said something like 2013.
Q Can you speak into the microphone?
Can't get much closer without kissing it.
Q I don't think it wants that. Don't worry.
It's the first time I've had one without a cover since I've testified in the last few years. I believe my testimony is, I asked most years. I could have missed one but I did ask most years and I believe my testimony was 2013. I believe, but, we can pull that up, if you'd like to confirm that.
Q So, your testimony today, under oath, is that you, specifically, recall, on one or more occasions, Jeff McConney to give you every appraisal that he had. Is that your testimony?
My testimony is --
Q Yes or no, sir, please.
My testimony is that I asked for -- do you have any other appraisals.
Q That is not my question, sir. Did you or did you

not, as you sit here today under oath, ask Jeff McConney, on one or more occasions, give me all the appraisals you have. Yes or no?
That's not the words I used. My words were, do you have any other appraisals.
Q So, is your testimony then that it was only on a year that you got one appraisal, you'd ask him if he had more appraisals? Yes or no, sir?
No. My testimony is that when the Trump Plaza LLC, Trump Plaza LLC, and TIHT Commercial LLC appraisal appeared, I asked: Do you have any-- that's when I started asking: Do you have more appraisals.
Q Mr. Bender, please. You keep saying when you started. I'm trying to make it clear for the record because in a little while, Mr. McConney will raise his right hand and will be asked these very same questions by Mr. Wallace and his colleagues, because I want to tee this up now because I, respectfully submit, there is going to be a difference. So, let's be clear.
So, is it your testimony now that on specific years, you told Jeff McConney: Give me all the appraisals you have. Yes or no?
My --
Q Please, sir. Mr. Wallace can --
THE COURT: Yes or no. If you want it read

back, read it back or --
THE WITNESS: Read it back.
THE COURT: Let's have a read back.
(Read back.)
I would submit that's the word "ask" not "told" but the answer would be yes.
THE COURT: Is that sufficient?
MR. ROBERT: I'm going to probe a little, sir.
Q So, you asked Jeff McConney every year to give you appraisal's to the extent he had any appraisals. That's your testimony under oath?
Say that question again, please.
Q Your testimony under oath today is that every year you asked Jeff McConney to provide you with any appraisal he may have had; yes or no, sir?
I never said every year.
Q You don't recall. Let's take a step back.
On the years that you did, is that question-- is that the way you phrased it to Mr. McConney?
The way I phrased it to Mr. McConney is: Do you have any other appraisals.
Q Mr. Bender, we're having a disconnect here, because, when you say: Do you have any others, that presupposes there was one. So, since you don't remember what year it was, I was trying to help jog your memory.

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So, is it your testimony then that only on the years when you got one appraisal, you said: Hey, Jeff, do you have any more?

My testimony is when I got THIT Commercial and Trump Plaza Commercial's appraisals, I said: re there any more appraisals.

Q So, that is one time?

No, that is when it started, and, I asked most years.

Q You asked-- so, on a year that there were no other appraisals given to you as backup for the SOFC, you said: Hey, Jeff, do you have any other appraisals?

I asked him: Do you have appraisals, at the time the first ones appeared.

Q So, your testimony is, after the first one appeared in the year, you don't know every year, you would say to Jeff McConney, do you have any other appraisals, even if he didn't give you any appraisals for that year? Yes or no, sir? Please.

Say that, again, please.

MR. ROBERT: Can I have it read back, please?

THE COURT: Read back.

Yeah.

MR. W LL CE: I'm going to object at this point. His testimony has been clear. Mr. Robert keeps

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rephrasing it in different forms.

THE COURT: Overruled. I hope we don't need another read back. Let me see.

MR. ROBERT: I'm trying to do it in as tight a way I can, Judge.

THE COURT: You seem to be asking if there weren't any, would he ask for any others, and, logically, you can't say are there any others, if there weren't any.

MR. ROBERT: That is what I'm going to get at. I respectfully summit you're going to here diametrically opposed testimony, either today or tomorrow, from Mr. McConney, because, in my opening, I told it's all about credibility, and, I stand before you today saying the same thing.

So, I want to figure out exactly what it is you say you said because that is not the way we see things.

MR. W LL CE: I will object to the representation about what other people will testify to that have not appeared in court.

THE COURT: Sustained. You should not do that. I think I have it fairly simple.

MR. ROBERT: Please try, Judge.

THE COURT: If you didn't receive any appraisals for a given year, would you actually say: Do you have any others?

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THE WITNESS: Do you have any appraisals. Do you have any others. I apologize to the Court if I had the wrong word, but, starting at the point when he started giving me appraisals, I started asking: Do you have any other appraisals or you have any appraisals -- or have any appraisals. I started asking for appraisals at the point when the first appraisal appeared.

Q That is different from what you've been saying. So, let's be clear.

re you saying that you would either say to him: Now, do you have any appraisals, or, do you have any other appraisals, or, to you, does it mean the same thing?

To me, it's the same thing.

Q So, you don't remember exactly what it is you said to Mr. McConney on the years you don't remember what the years were?

I don't remember word for word but I know I asked for appraisals.

Q You know you asked Jeff McConney for appraisals. You don't remember the words you used?

I --

Q Correct? Yes or no?

No, I do not remember the exact words.

Q No one was witnessing when you asked for these, correct?

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I don't recall.

Q You didn't send him any e-mails about it?

No, I don't recall.

Q You didn't send him any text messages about it?

I don't text, generally.

Q You don't recall texts. You don't recall e-mails. You don't recall if anyone is in the room, but, you have a specific recollection today that you asked him for it, but, you still don't remember if you even spoke to your lawyer two nights ago, right?

I said I did speak to my lawyer two nights ago.

Q You don't really know what you asked Jeff McConney for. Do you, sir?

Yes, I do.

Q Sir, you're aware of the accepted standards of practice for an accountant, correct? Generally speaking?

Generally speaking, yes, sir.

Q You know that if you depart from generally accepted accounting standards, liability can be imposed, correct?

Yes.

Q It can be liability in terms of accounting malpractice, correct?

I believe so.

Q nd there can be regulatory and criminal obligations that flow from it, correct?

Yes, sir.
Q You know, as you sit here today, that, to the extent you give any admission that shows you departed from general and accepted accounting standards, that potentiality you and Mazars will be sued by our clients, correct?
I never really thought about that.
Q You never thought about the fact that there was liability? Perhaps, that our client would sue Mazars or you?
It wasn't my biggest concern, no, sir.
Q You just went from it wasn't a concern to it wasn't your biggest concern. Can we at least agree it was a concern of yours?
Not really sir, no. I wasn't worry about it.
Q You didn't worry about that. You're not worried your testimony today will be scrutinized by regulator, or are you?
Never thought about it.
Q What about the authorities?
Which authorities?
Q The District ttorney's Office, US ttorney. You're not concerned your testimony will be scrutinized by them?
No, sir.
Q Okay. That, you're certain of?
Yes, sir.
Q You know, another thing you weren't too sure about over the last few days is how big a client our clients were to

you.
Do you remember, generally, that testimony?
I don't remember the exact revenue stream, if that's what you're talking about.
Q I think we established pretty clearly that in any given year for the last ten years, the fees generated by Mazars was over a million dollars?
Yes.
Q Some years, as high as 2.6 million?
I don't recall the exact number.
Q Can we at least agree they were your biggest client?
My biggest client, yes.
Q Can we agree they were a cache client to have?
Me, personally?
Q Yes.
I wasn't really into-- it wasn't a cache thing for me.
Q Do you think, as you sit here today, you would have been made a partner at a large firm like Mazars but for the fact the Trump Organization and affiliated members were your clients?
I can't speak to what Mazars would have done or didn't do.
Q How much of your business, percentage-wise, is not Trump related-- withdrawn.

From 2010 to 2020, on average --
MR. ROBERT: nd I'm not going year by year, Judge. I promise.
Q For those ten years, on average, the Trump Organization was your largest clients, right?
Yes, sir.
Q More than 50 percent of your revenue was generated by them, correct?
Yes, sir.
Q If we added up all the other clients you had, it was going to be less than the amount of money the Trump Organization generated for fees for you, correct, in any given year? True?
Yes, sir.
Q Okay. You know, there was also some testimony about your-- and I'm going to use the word, and then I'll change it. Your review of the McConney spreadsheets. You remember?
I don't remember using the word "review".
Q There was a whole back and for you and Mr. Suarez using the word "review." It dawned on me, to accountants, review means something different than it means to the rest of us, right?
Yes.
Q We have three levels to review. Financials, right? We have an audit?

You're using the word "review" inappropriately, but, I understand where you're going.
Q That's great because during the break, since we were allowed to bring in our iPads, I was looking for a synonym for review so I can use a word we both agree on.
Can we use the word inspect?
Look at.
Q Well, it's funny. You have a different-- I looked at the definition of look because you had a different definition of "look" yesterday. When you said "look" is kind of skimming. You remember that?
No.
Q When you look at something. When you look at something are you comprehending what's in there?
THE COURT: This is starting to sound like the interrogation of Bill Clinton. It depends upon what the definition of "is" is.
Q I want to ask some questions about the McConney spreadsheets and I know if I used the word "review," the answer will be I didn't, and, I appreciate it wasn't a review, and, I can't say did you compilate the spreadsheet. So, I'm trying to come to a term we can agree on.
THE COURT: He's suggested looked at and inspect.
Worked on.

Q Worked on? Okay.
Use. Use. Whatever you prefer.
Q So, you worked on?
Used, I like but go ahead.
Q Used is a better word?
Yes, sir.
Q Okay. So, my English will be a little bad for the record because I'll use the word "use". You used the McConney spreadsheets?
Mazars used the McConney spreadsheets, yes.
Q So did you?
I'm part of Mazars. Yes, sir. I was part of Mazars.
Q When this was discussed the other day, the Judge took judicial notice the other day that companies act through people.
So, can we agree that Mazars acted through you as the primary liaison with the defendants in this case? Fair enough?
Yes, sir.
Q Okay.
For a number of years.
Q I'm sorry?
For the last --
Q Last ten years. Before 2020. 2010 to 2020?

Yes, sir.
Q We can agree on that? Okay.
When you used the McConney spreadsheets, you made a very big point of saying you didn't go through them line by line. Remember that?
Yes, sir.
Q I want to be clear. I'm not suggesting -- we can take a step back.
Do you think you had an obligation to go through them line by line?
No, sir.
Q We can agree, in a world of levels of seniority in an organization, you may not be looking line by line, like I might not be looking at citations in a brief. Somebody else may be doing it but I'm signing my name to it, like you're signing your name to Statements of Financial Condition?
Yes, sir.
Q I don't want to waste the Court's time putting it on the screen, but, in addition to their being a line-by-line Excel spreadsheet, there was descriptions under each category of how Mr. McConney came to his valuations, correct?
I don't know if there's each category.
Q Sorry?
I'm not sure if there were descriptions in each category.

Q Well, sir, again in trying to do this quickly, can we agree as to the main assets held by the Trump Organization when we come to a value, whether it was Trump Tower, seven Springs, one of the other-- 40 Wall. On the McConney spreadsheet, he would explain how he came to the valuation?
We can put it on the screen but I want to save time.
There is a detailed cross-reference, but, for instance, cash-- I don't know if there is a description.
Q I didn't ask about cash. Did you call the bank to verify how much money was in the bank?
No, sir.
Q But I'm not asking you about cash. I'm asking you about the major real estate assets. Let's take three, for example. 40 wall, Trump Tower, and Seven Springs. You're familiar with the three assets owned by the defendants?
Yes, sir.
Q Can we at least agree that underneath those, on the McConney spreadsheet, it explained the way Jeff came up with the value?
Yes, sir.
Q Okay. In your use of the McConney spreadsheets, did you use that information? Did you look at that?
Personally?
Q Yes.

I don't know if I looked at it every year.
Q So, you didn't personally even look at the highlights that show how a valuation was come from -- where a valuation came from?
I don't recall if I looked at every line, if that's what you're asking.
Q I'm not asking about every line. I'm trying to make it simple. I don't think everyone in the courtroom thinks you'd be looking at every line of a 40-page spreadsheet.
What I'm asking is: Did you, as a partner in charge of this multimillion-dollar account, your biggest client at Mazars, did you at least look at the valuation methods that were used by the Trump Organization for its largest assets?
I looked at those assets, yes, sir.
Q You looked at those assets and you looked at the description as to how the valuation was determined, correct?
I believe --
Q Yes or no, sir?
I believe I did, yes.
Q Okay, you did. You didn't have a problem --
THE COURT: He said: "I believe I did." You can't say, oh, then you did.
MR. ROBERT: Fair enough.
Q So, you don't know, one way or the other, whether you

looked the it?
To the best of my recollection, I did.
Q Let me ask this. When we talk about generally accepted-- acceptable accounting standards, do you think it would have been appropriate, yes or no, for Mazars to sign off on the Statement of Financial Condition and you, as the primary partner in charge of the account, to have not looked at how the valuations came, how the valuations came about before you signed off on it?
So, I did look at the largest assets. You're correct, sir.
Q Okay. You didn't have a problem with them?
I had no problem with them. t the time we issued the compilation report, I had no problem with it. No, sir.
Q t the time you issued the compilation report, you had no problem in the methods Mr. McConney used in coming to the valuations, correct?
I had no problem with the methodology the Trump Organization came up with. What's the rest of the sentence? To-- substitute the Trump Organization for Mr. McConney.
Q Fair enough, sir. It wasn't until the time that after you sat down with the New York County District ttorney's Office that you then had a change of this opinion; yes or no? Please, sir. Yes or no?
I do not --

Q Yes or no, please. It's a very simple question?
I can't answer that question.
Q So, you can't answer the question?
I can't answer it yes or no.
Q You can't answer the question yes or no that it-- let me ask -- I'll withdraw the question.
Prior to your meeting with the New York County District ttorney's Office, you did not notify, you, The Trump Organization that you had any problem with that, did you?
Say that again, please.
Q Prior -- withdrawn.
You testified earlier today --
MR. ROBERT: nd this is my last point. I'm not going to belabor it, Judge.
Q You testified earlier today that it wasn't until you sat down in the Manhattan District ttorney's Office, with Mazars' lawyers by your side, up until that point in time, you were not aware of these additional appraisals, correct?
That's not what I testified.
Q You didn't testify that you-- that this was-- your first foray into knowing there were these additional appraisals was when you met with the Manhattan District ttorneys by Zoom?
That is a different question. You said when I was in the Manhattan District ttorney's Office.

Q That-- you seem to be very precise, right? That's a compliment, sir. You can take it.
I'm not very precise but I'm trying to listen to your questions and give you honest answers.
Q nd I appreciate that, sir. So, being precise. So, now we just spent a few minutes and thank you.
So, it was not until the Zoom meeting with the Manhattan District ttorney's Office that you first had any concern about the work you had done for the Trump Organization, correct?
That is correct.
MR. ROBERT: I have no further questions. Judge. Thank you.
THE COURT: I think it's time for a break. s usual, we'll have a ten-minute break but take 15 minutes, and I will be strict about that.

(Continued on the following page..)

THE COURT: Mr. Wallace and your team, any re-direct of the previous witness?
MR. W LL CE: I have exceedingly brief re-direct. It will just be a couple minutes. So, if we could get Mr. Bender back.
(Whereupon, there was a pause in the proceedings.)
(Whereupon, the witness resumed the witness stand.)
THE COURT: Okay please proceed with re-direct.
RE-DIRECT EX MIN TION
BY MR. W LL CE:
Q Welcome back, Mr. Bender. I assure you, I will try to be exceedingly brief.
MR. W LL CE: Could we please pull up Defendant's Exhibit 950.
(Whereupon, a document was displayed.)
Q Mr. Bender, up on the screen we have defendant's Exhibit 950. It's a document entitled Personal Financial Statements Guide with Conforming Changes as of May 1, 2008, audit and accounting guide. Do you remember discussing this document with Mr. Suarez?
Yes, sir.
Q Okay. I'm just going to note that this document comes from the University of Mississippi, and over here we can see

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that it's from the merican Institute of Certified Public ccountants, ICP , Historical collection. Do you know why this document came from the historical collection?

Not off the top of my head.

Q Do you recall that in 2009, U.S. G. . .P. was replaced by the F SB, with the release of the F SB ccounting Standards Collection?

I don't remember the date, but that's approximately correct. Yes, sir.

Q Okay. Let me show you a document, see if I can refresh you on the date.

(Whereupon, a document was displayed, and handed to the witness.)

Q It's a long document. I'm not going to ask you to look at the whole thing. I would just like to direct your attention to the header at the top of the page which states -- I will represent to you, this is a copy of the same document we were just looking, at that Mr. Suarez shared with you, but this version states at the top, "Notice to Readers, Executive Summary, U.S. G. . .P. was replaced by the F SB with the release of the F SB ccounting Standards Codification on July 1, 2009. The codification is effective for financial statements for interim or financial reporting periods ending after September 15, 2009. While the accounting guidance in this audit and accounting guide may be useful, only guidance that was

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incorporated into the certification is considered authoritative."

THE COURT: Codification. Not certification.

MR. W LL CE: Codification. Thank you, your Honor.

Q Does this refresh your recollection as to the dates that U.S. G. . .P. was replaced by the F SB?

Yes, sir.

Q Okay. So, the guidance that you were shown by Mr. Suarez was no longer authoritative as of 2011?

That's correct.

Q Okay. nd if you were consulting with your colleague Mr. Cohen about what standards governed your work from the period of 2011 forward, it would not have been in reference to this guidance; is that correct?

It would have been with the superseded guidance. Mr. Cohen, or anybody else I consulted with.

Q Okay.

MR. W LL CE: If we can go back to Defendant's Exhibit 950, and go to D-950, 22.

(Whereupon, a document was displayed, and handed to the witness.)

MR. W LL CE: nd if we can blow up item 2.05, please. I'll just read it into the record. This is section 2.05.

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Q I believe you discussed this with Mr. Suarez, and it states, "Before commission, the accountant should read the compiled personal financial statements and consider whether such financial statements appear to be appropriate in form and free from obvious material errors. In this context, the term error refers to mistakes in the compilation of financial statements including arithmetical or clerical mistakes, and mistakes in the application of accounting principles, including inadequate disclosure. Misstatements that might occur in personal financial statements prepared in conformity with generally accepted accounting principles, G. . .P., include," and then there's series of four bullet points?

Yes, sir. I see that.

Q Do you remember Mr. Suarez taking you through these bullet points?

Yes, sir.

Q nd I believe that earlier today he asked you a number of questions about whether the statements in each year complied with the bullet point at the bottom here which states, "Presentation of an asset or liability at an obviously inappropriate value or amount."

Do you recall that testimony?

Yes, sir.

Q Okay.

MR. W LL CE: Could we put this up?

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ctually, let's just pull up Defendant's Exhibit 25.

(Whereupon, a document was displayed, and handed to the witness.)

re we done with these?

Q You can just put that to the side, for now.

So Mr. Bender, I'll direct your attention to the top of the screen. It states, " R-80, Compilation of Financial Statements." It states, "Issue date --"

R section.

Q R section. Thank you?

Okay.

Q "Compilation of Financial Statements. Issue date, unless otherwise indicated, December 2009. See section 9080 for interpretations of this section."

Do you know if this is the section that replaced the guidance you had been looking at?

Yes, sir.

Q So, this was in effect from 2009, forward?

I believe so. Yes, sir.

Q nd just to keep this moving along, I'll represent to you that this guidance was superseded, as of December 15, 2015, but I would like to take you to page 4 of this document, and if we could look at the item under, Reading Financial Statements, and this states, "Reading Financial Statements, before

submission, the accountant should read the financial statements and consider whether such financial statements appear to be appropriate in form, and free from obvious material errors. In this context, the term error refers to mistakes in the preparation of financial statements, including arithmetical or clerical mistakes, and mistakes in the application of accounting principles, including inadequate disclosure."

Do you see that language?

Yes, sir.

MR. W LL CE: I would like to put this up next to the language we looked at in Defendant's Exhibit 950-22, if we could.

So, can we put that side by side, with the stuff we just looked at? Oh they're on top of each other.

Q So you can see, the first two sentences are pretty close; correct? It states, especially in the second sentence -- well, they're pretty close?

One refers to compilation.

Q Right, but they say that before submission, it should consider whether such financial statements appear to be appropriate in form, and free from obvious material errors. They both state, in this context, "the term error refers to mistakes in the compilation of financial statements, including arithmetical or clerical mistakes and mistakes in the application of accounting principles, including inadequate

disclosure." But the version on the top that comes in at 209, it no longer has those bullet points does it?

No, but there's a little difference in wording.

Q Right.

You said the same. They refer to -- the bottom one refers to compilation, I believe.

Q Right. So this bullet, though, about the presentation of assets or liabilities, and obviously inappropriate value, or amount, had been removed from the guidance?

It appears so.

Q Okay.

What you are showing me.

Q So those would not have been authoritative guidance at the time you were discussing, with Mr. Cohen, what standards apply to the 2011 Statement of Financial Condition of Mr. Trump; is that correct?

I will have to confirm that with somebody in my technical group.

Q Okay.

nd it could have been Mr. Cohen, or somebody else in my firm.

Q But the bullet point would not have governed your work on its financial statements for the leader of the free world; is that correct?

No, sir.

Q Okay.

MR. W LL CE: Nothing more.

THE COURT: ny re-cross?

No. Okay. The witness is excused.

THE WITNESS: Thank you, your Honor.

THE COURT: nd we need a five-minute break for technical reasons. I advise everybody to stay where you are.

(Whereupon, the witness was excused from the courtroom.)

(Whereupon, there was a pause in the proceedings.)

THE COURT: Plaintiff, would you like to call your next witness?

MR. MER: Yes, your Honor. We call Jeffrey McConney.

THE COURT: nd where is Mr. McConney?

(Whereupon, there was a pause in the proceedings.)

THE COURT: Because Mr. McConney is a party, he has an absolute right to be sitting here the whole time. Maybe just he didn't think it would be exciting enough.

MR. ROBERT: That must be what it is.

J E F F R E Y M C C O N N E Y, after having first been duly sworn, was examined and testified as follows:

THE COURT OFFICER: Please have a seat. Please state your name and business or home address on the record.

THE WITNESS: Jeffrey McConney, 390 First venue, New York, New York.

THE COURT: You seem to have a nice, loud voice, but I will ask you to speak right into the microphone, nice and loud, slow, clear.

THE WITNESS: I'll try. Thank you.

DIRECT EX MIN TION

BY MR. MER:

Q Good afternoon, Mr. McConney. My name is ndrew mer. We have not met before. I'm with the ttorney General's office.

m I correct that you graduated with a Bachelor's of Business dministration from Baruch College in 1978?

Yes, sir.

Q nd your degree was in accounting; is that right?

Yes.

Q nd after you graduated, you worked for a small real estate company, and then went to an accounting firm; is that correct?

Yes.

Q You worked at the accounting firm for about nine years before joining the Trump Organization in about pril of 1987; is that right?

That's correct.
Q nd am I also correct that when you were at the accounting firm, that's where you first met and worked with Donald Bender?
Correct.
Q nd when you started with the Trump Organization, you started as an assistant controller?
Correct.
Q nd at that time, Mr. Weisselberg, llen Weisselberg, he was the controller of the organization; is that right?
Yes.
Q nd it's when he was promoted to Chief Financial Officer that you stepped into his role as Controller of the organization; is that right?
Yes.
Q nd as controller, you reported to Mr. Weisselberg; correct?
Correct.
Q nd during the entire time that you were controller, he was your boss; correct?
Correct.
Q Is it also correct that you basically had the same job and same responsibilities when you your title changed from ssistant Controller to Controller? Is that fair?
That's correct.

Q nd your responsibilities included making sure interest payments were made on loans; is that right?
Yes.
Q nd you dealt with the general ledger; correct?
Yes.
Q nd you oversaw accounts payable and accounts receivable; correct?
Yes.
Q re you still employed by the Trump Organization?
No.
Q nd when did you leave the Trump Organization?
I retired February 25th. February of this year.
Q nd did you receive a severance package when you left?
Yes, I did.
Q nd how much that was severance package.
The total package was $500,000.
Q nd have you received all of your severance, as we sit here today?
s of today, no.
Q How much have you received, and how much is left to go?
375,000 has been received. 125,000 is the last payment.
Q nd is that contingent on anything?
No. Other than me being alive, no.

Q Let's talk about the Statements of Financial Condition for Donald J. Trump. You became involved in the preparation of Mr. Trump's annual Statement of Financial Condition and eventually took over the whole processes, likely sometime in the 90s. Is that fair?
Sometime in the 90s, I believe. Yes.
Q nd you were primarily responsible for preparing Mr. Trump's statement between 2011 and 2017; is that fair?
We didn't -- we, being the Trump Organization, didn't prepare the statement. Mazars, or whatever their name was at that time, prepared the statement. I prepared the backup for the statement.
Q nd you prepared the valuations that went into the statement; is that fair?
Yes.
Q nd you were primarily responsible for preparing the valuations between 2011 and 2017; is that right?
Yeah. I don't remember if it was the June of '16 or the June of '17 statement when I walked away, but that's correct.
Q nd starting in around 2016 or 2017, you received assistance from an employee named Patrick Birney, in the preparation of the valuations; correct?
Correct.
Q nd is it fair to say that starting in 2017, after

Mr. Birney came on board, you played less of a role in preparing the valuations that went into the statement; is that correct?
Whenever that handoff was, I had little to very little to do with the financial statement.
Q round the time that Mr. Birney took over for you?
Right. Once Mr. Birney took over, I had little to do with the statement.
Q But you still reviewed Mr. Birney's work with him; didn't you?
I believe the first time we went through it, I'm not too sure, or I don't remember, how much interaction I had with him, after that.
MR. MER: I'm going to put up, your Honor -- we prepared a demonstrative. We labeled it PDX-2, and it shows the sources, which I believe are all already in evidence.
(Whereupon, a document was displayed.)
MR. MER: I don't know your preference on demonstratives. Do you want me to admit it into evidence, or not?
THE COURT: Yes. I would like that.
MR. MER: Okay. So, I would ask that this be admitted into evidence.
MR. ROBERT: s a demonstrative exhibit, obviously. Not -- I'm not used to having a

demonstrative -- I'm used to having a demonstrative document be marked, but not moved into evidence, so I would object that a demonstrative document be put into evidence.

THE COURT: Well, I don't know that it matters, in a bench trial, but would plaintiff be willing to just have it marked as an exhibit, rather than it admitted into evidence, as of now?

MR. MER: I was asking your Honor how you would like to do it, and I'm fine either way. I would say we admit it -- I'm fine to say we are admitting it solely as a demonstrative, if that helps Mr. Robert's objection.

MR. ROBERT: Let's mark it as demonstrative. We'll talk over the break. I think we are saying the same thing. We'll work it out.

MR. MER: Does your Honor want a copy?

THE COURT: Yes.

(Whereupon, a document was handed to the Court and to the witness.)

THE COURT: It's on the screen, but I like souvenirs.

Q This just puts in chart form, on a single page, the as-of date of the statements, and the actual date that the statement was issued, and as this indicates -- and you can confirm Mr. McConney -- the statements were all done as of June 30th of the year that they covered; correct?

Yes.

MR. ROBERT: Do they have a hard copy to give us? I see something was handed to the witness.

(Whereupon, a document was handed to counsel.)

Q nd it looks as though, for all but three years, the statement is issued in October or November of the year that the statement covers; correct?

Yes.

Q nd for '15 and '16, it looks as though the statement was not issued until March of the year after the year that it covers. Do you see that?

Yes.

Q nd am I correct that in 2015, the statement issue date was delayed because Mr. Trump was campaigning for office? Is that right?

That's correct.

Q nd in 2016, the statement was delayed until March because of the transition to the oval office; correct?

Yes.

Q There's one other year where the statement was delayed by a few months, and that's 2020. The judge alluded to this in his opinion, but I would like to confirm, was that due to the Covid pandemic?

I really don't remember. I didn't have much to do with --

Q Okay.

-- the June 30 of 2020 statement.

Q Generally speaking, unless there were extenuating circumstances, the annual statement was due in October; is that right?

Yes.

Q nd that's because Mr. Trump's lenders required submission of an annual financial statement as part of the covenants in the terms of the loans that were made to Mr. Trump and the Trump Organization; is that right?

Yes.

Q s a general matter, the due dates for those statements on those loans were October 31 of each year; is that right?

Yes.

Q You knew every year that once June 30 passed, you would need to start working on the statement as soon as you could; right?

Yes.

Q nd you would start working on the statement in July or ugust; right?

Depending on the year, but yes.

Q nd the statements take a long period of time to work up and there's a lot of work involved in doing it; correct?

That's correct.

Q nd to start the process of preparing the annual Statement of Financial Condition, you began with the years' prior Excel spreadsheet; is that right?

Yes.

Q nd that spreadsheet is something that was called, internally, Jeff Supporting Data; is that right?

Jeff supporting something. I don't remember the exact name.

Q nd the Jeff was you; correct?

Yes, sir.

Q nd the Excel spreadsheet would include two years' worth of information; is that right?

Correct.

Q nd the information in that spreadsheet included the valuation methodology and prior valuations for each of the assets valued in the statement; is that right?

Yes.

Q nd you would also go through the backup for assets, and determine what information you needed to prepare the next statement; correct?

Yes.

Q You would gather that information and input the new information into the Jeff Supporting spreadsheet; right?

Yes.

Q nd different assets on the statement were valued

differently; correct?
Yes.
Q nd so the valuation methodology dictated what new information you needed in each year; correct?
Yes.
Q nd is it correct that the meat and potatoes of the financial statement, in terms of preparing valuations and making decisions with respect to those valuations, would be done by Mr. Weisselberg and you, prior to Mr. Birney's involvement, and then you, Mr. Weisselberg, and Mr. Birney, once he started to be involved?
nd then just Mr. Birney and Mr. Weisselberg.
Q Can you put a year on it, when it became just Mr. Weisselberg and Mr. Birney?
It's been a while. It could have been the June of '17 statement, the June of '18 statement. But it was a fairly quick process.
MR. MER: I would like to put up PX-717, which is the 2014 engagement letter, which has already been admitted into evidence.
(Whereupon, a document was displayed, and handed to the witness.)
Q Mr. McConney, you are familiar with this document; right?
Yes, sir.

Q This is a letter dated January 2nd, 2014 from Mazars to the Trump Organization; right?
Yes.
Q nd it's signed by Mr. Weisselberg; correct?
Yes.
Q He has acknowledged the document by his signature, and accepted it; correct?
Yes.
Q You reviewed this document before Mr. Weisselberg signed it; correct?
Yes.
Q nd is it correct to say that you continued to review these engagement letters, even after Patrick Birney started taking over your role in the preparation of the valuations?
I believe that's correct. Yes.
Q nd you understood the terms of the compilation engagement set forth in this letter, at the time that you reviewed this letter; correct?
Say that again, please? Can you ask that again?
Q Sure. You understood the terms of this compilation engagement letter at the time that you reviewed it; correct?
Yes.
Q If we go to page three of the letter, you will see there's a section entitled, Management Responsibilities; right?
Yes.

Q You understood that, pursuant to this engagement letter, Mr. Trump had an obligation to comply with these responsibilities set forth in through F; right?
Yes.
Q nd I just want to highlight, in particular, item F, which says that, "It's management's responsibility for making all financial records and all related information available to us."
Us being Mazars; correct?
Yes.
Q nd for the accuracy and completeness of that information; right?
Yes.
Q So you understood at the time that this language placed the responsibility for providing complete and accurate information squarely on Mr. Trump's shoulders; correct?
Yes.
Q nd for 2016 through 2021, you understood, based on the engagement letters for those years, that the management responsibilities listed were the obligations that rested with the trustees of the revocable trust; correct?
MR. ROBERT: Objection.
THE COURT: Grounds?
MR. ROBERT: Rested? I guess if the witness understands it, I withdraw the objection.

THE COURT: Okay.
I believe that's correct.
Q nd can we agree that your personal and professional relationship with Mr. Bender, going back decades, did not in any way relieve Mr. Trump or his trustees from having to comply with any aspect of these management responsibilities; correct?
Correct.
Q You provided Mazars with financial information, in the form of the supporting data spreadsheets that we discussed, for use in compiling Mr. Trump's annual Statement of Financial Condition; correct?
The information we used to prepare my spreadsheet, yes.
Q nd you provided that information in order to comply with the obligation in item F of the engagement letter; correct?
Correct.
Q nd this letter explains that Mazars is performing a compilation, and not an audit or a review; correct?
Yes.
Q nd you understood the significance of that terminology; correct?
Yes.
MR. MER: nd why don't we go to the compilation procedures paragraph, which is on page one.
Q nd this says, in the second paragraph, " compilation

differs significantly from a review or an audit of financial statements."

You certainly understood that at the time; correct?

Yes.

Q compilation does not contemplate performing inquiry, analytical procedures, or other procedures performed in a review. You understood that; right?

Yes.

Q So you had no expectation that Mazars was going to perform inquiry, analytical procedures, or other procedures like those an accounting firm performs in a review; correct?

I wouldn't say that.

Q You understand, though, that this was a compilation, and that the engagement letter sets forth that a compilation does not contemplate that the accounting firm would perform inquiry, analytical procedures, or procedures performed in a review; right?

I understood that.

Q Okay. nd additionally this says, " compilation does not contemplate obtaining an understanding of the company's internal control;" correct?

Yes.

Q nd it does not contemplate the accounting firm assessing fraud risk; correct?

Correct.

Q nd it does not contemplate the accounting firm testing accounting records by obtaining sufficient appropriate audit evidence through inspection, observation, confirmation or the examination of source documents; correct?

Correct.

Q nd source documents would be the documents you just testified would go to Mazars, along with your supporting data spreadsheet; correct?

Yes. I believe that's correct.

Q nd it does not contemplate the accounting firm conducting any other procedures ordinarily performed in an audit; correct?

Correct.

Q Now, you would send the supporting data spreadsheet and the backup material to Mazars on an annual basis; is that right?

If they didn't come to the office, yes, I would send it to them.

Q nd let's look at Plaintiff's Exhibit 03054.

(Whereupon, a document was displayed, and handed to the witness.)

(Continued on the next page.)

Q So, Mr. McConney, this first page is an e-mail from you to Mr. Bender, dated October 23, 2014, where you tell him: "Call me when you want to go over this," and this is sending Mr. Bender the prior year's Statement of Financial Condition that's been marked up. Is that right?

That's correct.

MR. MER: Okay, your Honor. I'd move this into evidence.

THE COURT: Granted. It's in evidence.

Q So, this you were sending in 2014 and the statement that you're attaching, if we can go to the second page. This was the statement for 2013 that you've marked up, correct?

Correct.

Q nd is all the handwriting in this document yours?

MR. ROBERT: Your Honor, while the witness is reviewing, you've already ruled, but, I'm going to object on the Statute of Limitations ground just to continue preserving our objections.

THE COURT: greed. Understood.

Can you ask me the question one more time?

Q Sure. Is all the handwritten notations in the document yours?

Yes.

Q If we turn to the assets page, which is page four, you've taken the prior year's statement asset sheet and you've

marked it up for 2014; is that right?

For June of '14, yes.

Q Was this the normal procedure that you followed each year that you were the one handling the preparation of valuations?

I would say there was no normal procedure. If I had time, I would mark the statement up, I guess. If I didn't have time, I would just provide the spreadsheet to Mazars and they'd provide the updated statement.

Q If we could just go back to the second page of the document, page two. I just want to ask you about the note you've written on the upper right-hand corner that says: "DJT to get final review."

Do you see that?

Yes.

Q That's your handwriting, yes?

Yes.

Q DJT refers to Donald J. Trump, correct?

Correct.

Q So, you're making a notation that you understood Mr. Trump was to get final review of the Statement of Financial Condition for 2014; is that right?

Yes.

Q Was that also the procedure that you understood was followed in each year that you had responsibility for

preparing the statement, that Mr. Trump would get final review?

I would get to the point where llen Weisselberg and I would review the statement and then I would get an okay from llen to let Mazars know if it was okay to finalize the statement.

I don't want to assume what happened in between the time I gave it to llen Weisselberg and the time llen gave me the approval.

Q My question is a little different. You testified your handwritten notation confirms your understanding that Mr. Trump was to get final review for this 2014 statement?

Correct.

Q My question is simply whether you had the same understanding that Mr. Trump was to get final review for each financial statement that you were primarily responsible for preparing?

Yes.

Q Okay. Did you have-- continue to have an understanding that Mr. Trump would get final review of the statements that Mr. Birney was primarily responsible for handling?

Once Mr. Trump became President Trump, I don't know what the process was on getting approvals. I think it was just the trustees, but, again, I didn't handle that or

remember that.

Q You provided copies of the statements to lenders to comply with the loan covenants, correct?

Yes.

Q You provided a copy of Mr. Trump's personal financial statement to, specifically, Royal Bank of merica; is that right?

I don't remember. It's possible. I don't remember.

Q Let me see if I can refresh your recollection. Let's look at PX-99.

Do you recognize this letter as the letter you signed going to Royal Bank of merica?

Yes, for the June 30, 2015 Statement of Financial Condition. Yes.

MR. MER: Your Honor, I ask that this be admitted into evidence.

THE COURT: It's admitted into evidence.

MR. ROBERT: Same objection as to Statute of Limitations.

THE COURT: Okay. I'll consider that a standing objection to anything before the relevant dates in 2014 and 2016.

MS. H BB : To make the record clear. gain, also anything that incorporates anything prior to that date, meaning the backup, et cetera. That was my prior

objection.

THE COURT: I'm overruling that because that is not the law.

MS. H BB : No. No. I'm saying, your Honor, we actually agreed on this before. I put on the record -- I put on the record prior, and I'll reiterate it moving forward, so I don't have to object, as well, that if there's a document that references anything prior to February 2016, those items, as his objection stands, same line of questioning. I'm just putting an objection on the record.

THE COURT: Okay. I'm sorry.

MS. H BB : Yes. It's okay.

THE COURT: lso a continuing objection on behalf of your clients.

MS. H BB : Yes. Thank you.

THE COURT: Sorry for the misunderstanding.

Q Mr. McConney, this is the letter you sent to Christopher Drimack at Royal Bank of merica relating to the seven Springs loan, correct?

Yes.

Q You say in your letter that you are providing the June 30, 2015 Statement of Financial Condition pursuant to the promissory note on that loan, right?

Yes.

Q So, this was something you were sending to the bank to comply with loan obligations, correct?

Yes.

Q Let's go ahead and mark-- or I'll share with you PX-100.

Mr. McConney, this is another letter you're sending to Mr. Drimack at Royal Bank of merica attaching the June 30, 2016 Statement of Financial Condition, correct?

That's correct.

Q That's your signature, correct, on the first page?

Yes.

MR. MER: Your Honor, I move this into evidence.

MR. ROBERT: Same objection, sir.

THE COURT: Their standing objections. You don't have to keep saying them. I recognize standing objections. The Court of ppeals recognizes the standing objections. You don't even have to call them a standing objection. It's in evidence. Yes.

Q s you did the year before, Mr. McConney, you are sending to the bank, Mr. Trump's June 30, 2016 Statement of Financial Condition in order to satisfy obligations under the promissory note, correct?

Correct.

Q nd Mr. McConney, you are aware that others within

the organization were provided with Mr. Trump's annual Statement of Financial Condition to disclose to entities outside the Trump Organization, correct?

Yes.

Q In-

THE COURT: Ten-minute warning. I need to break at 12:50.

Q In particular, you're aware that Michael Cohen was given a copy for one or two meetings, right?

He was given a copy. I don't remember which year or for how many meetings.

Q Would it refresh your recollection to share with you some of your deposition testimony on the screen? If we can put it up. This is page 124, lines 9 to 25.

Do you do remember that you sat for an interview where you gave testimony under oath, correct?

Yes.

Q Okay. If we look at line 124, 9 to 25:

"Question: re you aware of anyone else in the Trump Organization who provided Mr. Trump's annual Statement of Financial Condition for any year to anyone outside the Trump Organization?"

You asked to hear it read again.

Then you say: "Yes."

"Question: Who is that?

" nswer: I know Michael Cohen was given a copy for one or two meetings."

You see that.

Yes, sir.

Q Does that refresh your recollection that it was one or two meetings?

It does not refresh my memory, but, if it is, it was one or two meetings.

Q Your testimony was truthful when you gave it during the interview?

I believe, so. Yes.

Q You also know that Mr. Weisselberg provided the statement to insurance companies, right?

I believe he let them look at the statements, yes.

Q Let's put up PX-294. I'll see if I can do this in time before the break.

MR. MER: So, your Honor, PX-294 is the DB credit memo that Mr. Kise showed during part of his opening. So, I'm going to ask it be admitted into evidence. I'm hoping there's no objection.

THE COURT: If he showed it, I'm admitting it into evidence.

MR. MER: Thank you, your Honor.

Q Let's go ahead and turn to page 14 of this document. This was actually a page that Mr. Kise put up during his

opening, and, you'll see that there are various columns of information in this memo which refer to the client reported values of various financial statements in columns that are headed DJT 6/30/2011. Donald J. Trump 6/30/2012, client reported, and then two columns over, DJT 6/30/2013, client reported.

So, what I'd like to do is go through with you, if we can confirm where some of these numbers are coming from. If we could split the screen and put up the 2011 statement, which is Plaintiff's 787 in evidence.

If we can go to page four, the assets page. You can see, Mr. McConney, that the cash and Marketable Securities figure on the assets page, the 258.9 million matches the figure for cash and Marketable Securities in the first column headed DJT 6/30/2011. You see that?

Yes.

Q So, you would agree with me that that figure is pulled from the 2011 Statement of Financial Condition, correct?

Yes.

Q Then if we put up the 2012 statement, which is Plaintiff's Exhibit 815 and go to page five. We're looking at the assets page. You'd agree with me that the cash and Marketable Securities amount of 169.7 million ties into the figure that's listed in the Deutsche Bank credit memo for

2012, client reported, right?

Yes.

Q We'll do 2013 which is Exhibit 707 in evidence. Go to page four. You'll agree with me that the figure for cash and Marketable Securities of 339.1 million ties into that fourth column figure for DJT 6/30/2013, client reported, correct?

Yes.

Q In the credit memo, if we could turn to the next page and leave the statement up and let's look at the top column, the top chart. You'll see that there are figures for four properties. They're referred to as four trophy properties. You see that?

I'm sorry. I'll wait for you to get there.

Trophy properties, okay.

Q If you go to 2013 statement, you'll see that the figures for Trump Tower, Niketown, 40 Wall Street, and Trump Park venue all match what's in the credit memo. You see that?

Yes.

Q So, you would agree with me that the numbers in this chart and the credit memo are pulled from the 2013 statement, correct?

In the DJT valuation column, yes.

Q Okay. You'll see there's a figure under club

facilities in the credit memo of 1656.2. Do you see that?
Yes.
Q That ties into the dollar amount for club facilities in the June 30, 2013 statement, correct?
That's correct.
MR. MER: s the Court will recall, the credit memo relates to the OPO loan which closed in ugust of 2014. I think this is a good point to break, your Honor, if you gave me the ten-minute warning.
THE COURT: I'm sure everybody will be happy to break now. We'll be back at 2:15 as usual. Have a great lunch.
(Luncheon recess taken.)

(Continued on the following page..)

THE COURT: Mr. mer, do you have a statement of some sort to make?
MR. MER: Yes, your Honor. Just a point to raise, on the record. It concerns the defendant's application to the ppellate Division that they're going to present tomorrow morning, for a stay.
We still do not know, although we have requested multiple times, what the scope of the stay is going to be. Is it going to be a stay just of the equitable relief in your summary judgment decision, or will it be a stay of this trial? Which, obviously, you know, required tremendous resources to move forward with.
We believe that there is an obligation to have given us notice of the specific request for relief that they are going to seek, 24-hours notice. The papers have Mr. Robert's firm name on them. We would ask that he just say, in open court, on the record, what the scope of the stay is going to be, and if he refuses to say that, then at least we have that on the record, that we can take to the ppellate Division.
THE COURT: Well, he can't say what the stay is going to be. He can say what they are requesting.
MR. MER: That's what I'm requesting. What is the scope of the relief that they are seeking, so that we understand what the nature of the application is tomorrow

morning.
MR. KISE: So -- and I may have to defer, your Honor, to the expert, the acknowledged expert on the CPLR, but as I understand it -- and I just responded to Ms. Vale over the lunch break, a few minutes ago. s I understand it, 22NYCRR, whatever that is, 1250.4(b)(2) requires that the party seeking relief, as provided in this subdivision, shall give reasonable notice to his or her adversary of the day and time when, and the location where -- we have got all that covered -- the application or order to show cause will be presented, and the relief, including interim relief, being requested.
So, my appellate people are telling me we have done that. We have told them we are seeking a stay.
THE COURT: Of what?
MR. KISE: Interim relief -- well, that's the thing. Until we file it, tomorrow -- hold on -- I'm not sure they're entitled to ask these questions in a trial court proceeding. It seems irregular that we are even having a conversation in a trial court proceeding over an issue that is going to go to the First Department, but we are seeking a stay pending appeal, pursuant to the notice of appeal filed on Wednesday.
I've offered to have a conversation with Ms. Vale tonight. To the extent our appellate people can

communicate with them in between that time and sort out what's required and what isn't, but you know, until we file tomorrow morning -- we actually are filing tomorrow morning, and so it's possible, I don't know, it's possible we may change our mind. We may decide to seek, you know, door number one or door number two. I don't think that that's actually required, that we -- until we present our papers to the First Department. That's the Court that we are responding to. I mean, this is -- again, I'm not the expert here, but this is how it has worked in all the times I've gone up on interlocutory appeals, is you present your papers in the morning, and we go to court.
THE COURT: I disagree. They asked for the relief requested. That's the point of this notice, so they are not blindsided.
lso, beyond all this, I would just think it's a matter of common courtesy, you would just explain what you're planning to request, or are requesting.
MR. KISE: I mean will they be satisfied if I tell them -- what I'm concerned with is if I say it's , and it winds up being B tomorrow morning, then I'm going hear a lot of static from the ttorney General.
gain, I think it's highly irregular that we are having this conversation.
THE COURT: I don't think it's irregular, at all.

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MS. H BB : Your Honor, I actually have not even reviewed -- and I can say that, because I'm sitting here on trial with you. I haven't had an opportunity to review the papers, so I most certainly would like that opportunity, before we discuss anything with the G. I'm sitting here representing certain clients, and I'm not going to allow him to represent anything that would be prejudicial either. So, can we at least agree that, once it's final -- I mean, but I don't see why we would do this, ever. I have never done this.

MR. KISE: Why don't we do this. Why don't we do this. s you know, Judge I'm a pragmatist. Why don't we do this. Why don't we let him go ahead, and I will just say, let's assume it's both, for right now; okay? In that, it's a stay of the summary judgment, and the trial.

THE COURT: But --

MR. KISE: nd if it's not, then they will be over-prepared, but they won't be under-prepared. But, I can't commit, on behalf of several lawyers, several clients that haven't even spoken to, exactly what it's going to be. It's fair for us to say that it's a stay, and if they want me to commit to, it's both, then okay, I'll do that, but I don't know that tomorrow morning -- if it winds up being less, I just don't want to hear any complaint that it's going to be less.

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THE COURT: Well, I assume they can express that, that they don't want to be over-prepared, in terms of getting people to the courthouse here, and all.

MR. KISE: It's the same person, Judge. It's Ms. Vale. I mean, it's the same, and we have been communicating about this. Or, our office has been.

MR. MER: Your Honor, this is simple. We are entitled to -- the rules require 24-hours notice. It's not notice to say, We are doing something, but we don't know what we are doing. That's not notice. If they haven't decided what they are doing yet --

MR. KISE: No.

MR. MER: -- then they should switch it back to Tuesday morning.

THE COURT: nd by the way, I'm not the ppellate Division, but if I were, I would deny your request on the ground you didn't give notice, because they didn't know what they were up against.

MR. KISE: Then let's do that, just to satisfy Mr. mer and the Government. gain, I think it's highly irregular. We will be seeking a stay of both the summary judgment and the trial.

MR. MER: We have our record, and --

MR. KISE: Does that satisfy you?

MR. MER: It's not a question of satisfying me.

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It's a question of satisfying the rules. You have to give us 24-hours notice. You just put it on the record, and we'll have our appellate group deal with it tomorrow morning.

THE COURT: I think we can move ahead.

MR. ROBERT: nd I'm confident our notice this morning satisfies all the requirements to make a stay application before the ppellate Division. So, we can leave it at that?

THE COURT: I'm sorry. I didn't hear the start of that.

MR. ROBERT: I just wanted it to be clear that it is our position that the notice that we gave the ttorney General's Office -- including their appellate lawyers, knowing that all the trial lawyers are here in court today, including all of us -- of our intention to seek a stay tomorrow, at 10:00 tomorrow morning. So, they're aware of it.

THE COURT: Well, are they aware of it because of what's in the notice, or because of what you said two minutes ago?

MR. ROBERT: Our notice says that we are seeking a stay.

THE COURT: Well, that's clearly not sufficient.

MR. ROBERT: Well, I respectfully disagree with

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the Court, but you have additional notice, and if it turns out to be less, it turns out to be less.

THE COURT: Okay.

MR. KISE: But you know, again, I don't want to, by stating what I stated on the record, to withdraw from the position that our notice was sufficient as given, this morning. Let me be clear on that.

THE COURT: I understand.

MR. KISE: To be clear on that. But, they are asking. They have obviously, again, engaged in what I think is a highly irregular procedure, to have a conversation about an appeal in front of the Court that we are appealing from, but at all events --

THE COURT: Well, you said that five times, and I've disagreed with you five times.

MR. KISE: I know you have.

THE COURT: Chris and I understand each other. We don't always agree, but we understand each other. ll right. Now, are we ready to recall the witness? Let's get the witness back.

(Whereupon, the witness resumed the witness stand.)

THE COURT: Let's continue.

You are still under oath. You know?

THE WITNESS: Okay.

CONTINUED DIRECT EX MIN TION
BY MR. MER:
Q Welcome back.
Thank you.
Q I would like to turn to the cash asset category in the Statement of Financial Condition, and I would like to start by showing you the Statement of Financial Condition for 2016. It's Exhibit 756. It's already in evidence.
MR. MER: If we could pull up page three.
(Whereupon, a document was displayed, and handed to the witness.)
Q You will see that the first item on the assets page is cash, marketable securities and hedge funds, in the amount of $114.4 million. Do you see that?
Yes, sir.
Q Okay.
Yes, sir.
Q nd there are notes to this statement that explain aspects of each asset category; correct?
Yes.
Q nd if we look at page six, note two is the one that discusses this asset category; cash, marketable securities, and hedge funds; right?
Yes.
Q nd it says, "Cash, marketable securities and hedge

funds represents amounts held by Mr. Trump and amounts in operating entities."
Do you see that?
Yes.
Q nd we can agree operating entities, as used in this note, means entities within the Trump Organization umbrella; correct?
nd then some. Yes.
Q It's all operating entities that are within the Trump Organization?
It's the entities that are in the Trump Organization, and entities where Mr. Trump is a partner in those entities.
Q Is it intended to include entities over which Mr. Trump has no control?
Yes.
Q nd what about this language do you think would explain to a user that operating entities includes cash, marketable securities, and hedge funds within entities that Mr. Trump doesn't control?
I'm sorry. Can you say that again?
Q Sure. What is it in this language that is highlighted on this screen that you believe discloses to a user of this financial statement that this asset category includes cash, marketable securities, and hedge funds within entities that Mr. Trump does not control?

Well, the word operating entities is there. I don't know how individuals would interpret operating entities, but it doesn't specifically state entities that he does not control.
Q Well, it doesn't say operating entities that he has a minority interest in, either; does it?
It doesn't state, only entities that he owns 100 percent, or that he controls.
Q So, it's your testimony that this asset category includes cash that Mr. Trump does not have control over. Is that your testimony?
Yes.
Q nd that was your intent in valuing this asset, that you were going to include cash which Mr. Trump could not control and dispense? Is that your testimony?
Yes.
Q nd so, this is not, in your view, an asset category that represents Mr. Trump's liquidity. Is that what you are telling us?
The majority of it is his liquidity.
Q I didn't say majority.
Mm-hmm.
Q I'm asking you, are you telling us that this asset category, in your view, is intended to represent cash, marketable securities, and hedge funds, which do not reflect Mr. Trump's liquidity?

I'm not sure that question makes any sense to me.
Q Okay. You have an accounting background; right?
Yes.
Q You understand the concept of liquidity; correct?
Yes.
Q nd in order for this category to reflect Mr. Trump's liquidity, would you agree that he would need to have control over all of the assets that are in this category?
Yes.
Q With respect to assets that he doesn't have control over, those are not his liquid assets; right?
That's not the way we looked at it, but yes.
Q Okay. nd you're telling us that it was your intent to include, within this category, assets that do not reflect Mr. Trump's liquidity, because you have just told us you are including assets held by entities in which he owns a minority stake. Is that correct?
Yes. The same way we have included accounts payable in the same entities.
Q Why don't we pull up PX-2587, the native.
(Whereupon, a document was displayed, and handed to the witness.)
Q Focusing on -- well, let me first ask you about this document. This is backup that you provided to Mazars for this asset category for 2016; right?

Can you just scroll down to the bottom, with the total? Because I believe the answer is yes, but --

Q Okay.

MR. MER: Scroll down to the total, for the witness.

Just up a little bit. Up to the total of the cash.

Q We'll get there. Hang on a second.

Okay.

Okay. I'm sorry. Could you ask the question again?

Q Yes. This is the back up for the cash, marketable securities category we were just looking at for the 2016 statement; correct?

It's the spreadsheet that summarized the backup. Yes.

Q That's what you sent to Mazars, along with your Jeff Supporting Data spreadsheet; correct?

Correct.

Q You would consider this spreadsheet to be a business record; wouldn't you?

Yes.

Q nd if we focus on rows 11 through 16, you will see that each of those entities, 11, and then 16 through 19, all have, in parentheses, 30 percent of cash on B/S -- which I presume is balance sheet?

That's correct.

Q Okay. nd am I correct that each of these entities

that have the 30 percent parenthetical are entities that are part of the Vornado partnership?

They are two partnerships, so yes.

Q Okay. Vornado Partnerships, plural; correct?

Yes.

Q nd that's a partnership group in which Mr. Trump has a 30 percent minority interest; correct?

Well, I don't know if it's a group. It's, Vornado owns 70 percent; Mr. Trump owns 30 percent.

(Continued on the next page.)

Q He owns a minority percentage, correct?

Yes.

Q He has no ability to liquidate the amounts that are in-- that are ascribed to those entities, correct?

That's correct.

Q If we scroll down to the -- by the way, you've indicated here in the spreadsheet it's 30 percent. So, actually, if you looked at the balance sheet of the entity, you'd see the 100 percent number and you've taken 30 percent of it and put it on this balance sheet?

Correct. The same way we reflected the payables.

Q Is it okay if we refer to this shorthand as Vornado cash?

Fine with me.

Q Just so we're clear, Vornado cash is not cash that Mr. Trump has access to on his own, correct?

Correct.

Q He cannot withdraw the funds from the accounts where they sit, correct?

Correct.

Q Let's come back to -- let's go to PX-3041.

MR. MER: PX-3041 is the defendant's response to the 202 statement and I'm going to ask if we can go to page 142 at paragraph 403 and just blow it up. If we could just do the chart and the response below.

Q This is a response that was filed by you in this case, as a defendant, Mr. McConney, and you stated that it's undisputed that the values listed are those reflected in the Statement of Financial Condition and the amounts attributable to the Vornado operating entities are as stated.

MR. MER: I don't know if your preference is for something like this, your Honor, that we admit it into evidence or because it's on NYSCEF that's sufficient?

THE COURT: Let's consider this -- deem this admitted into evidence, even though it's already on NYSCEF, which is a whole different thing.

Q So, Mr. McConney, it is agreed then that for each year from 2013 to 2021, the Vornado cash is as stated in the second column. The statement year in the first column. The second column has the Vornado cash.

The third column has the total cash reported on the statement, and, the fourth column is just math, taking the percentage of that column two represent as to column three. So, that is stipulated fact.

Let's go and let's just confirm that your answer is the same with respect to all these years, that the Vornado cash, that has been agreed to, is cash that Mr. Trump has no control over, correct?

Correct.

Q Let's go back to PX-2587, the native. m I correct

that this spreadsheet then breaks out where these funds are located in different accounts, correct?

I'm sorry. Can you say that again?

Q Yes. The columns, for example, column D says Cash llied Irish Bank. So, that is an account that exists, right?

Right. That's the bank or brokerage company or whatever that holds that cash.

Q Okay. nd if we could-- and, by the way, the cash, Vornado cash is -- sits in a bank account controlled by the Vornado Partnerships, right?

Correct.

Q Can we collapse columns D through N? Mr. McConney, you list the Vornado cash in a Capital One account that you list cash for other entities that are controlled by Mr. Trump; isn't that true?

Yes.

Q So, you've got 40 Wall Street, LLC is in the Capital One account. That's clearly something Mr. Trump controls, right?

Yes.

Q Isn't it the case then that this document represents that the Vornado cash is in the same Capital One account that Mr. Trump's cash resides for those entities that he does control?

It doesn't represent that it's in the same bank

account. It represent it's in the same bank.

Q Do you know if the Vornado cash is all in a Capital One account?

Based on this, I would have to make that assumption, but, without looking at my backup, I can't make that statement here.

Q So, you have multiple Capital One accounts here. You have one called cash in Column O. You have one called cash in Column P. You have one called OS and E in Column Q.

Do you see that?

Yes, sir.

Q Isn't it correct, Mr. McConney, that anyone looking at this spreadsheet would conclude that all of the cash in Column O sits in the same Capital One account?

People can make assumptions in any way they want to. The users of the spreadsheet know that it's not one bank account.

Q It was your intent, when you created this spreadsheet, to put all of these cash amounts in Column O; and, that means that accounts that Mr. Trump controls and the accounts that hold the Vornado cash are in the same column under this same Capital One account, and, you intended that to be the case; isn't that right?

I did not intend it to be one account. This spreadsheet is not through Column V. If you keep going out,

it's a number of columns. t some point in time, we had to realize we couldn't keep adding columns for every single bank or brokerage company. Not account but bank or brokerage company that was involved.

If Hudson Waterfront or Vornado had their cash at Capitol One, it means that's the bank, not an account, but the bank that the money is in.

Q Mr. -

THE COURT: One second. We need to have a quick technical break of some sort.

(Brief pause.)

THE COURT: Continue.

Q Mr. McConney, if you wanted to list the five Vornado cash entities in a separate section, you'd only have to add one more column to the spreadsheet; isn't that right?

That's correct.

Q This is the spreadsheet that you sent to Donald Bender, correct?

Yes.

Q So, when he looks at this spreadsheet, he sees all of this cash in all of these entities, including ones that Mr. Trump controls, and the Vornado cash, in a single column labeled Cash Capitol One, correct?

Can you start that again, because I think the beginning of the question, I don't agree with.

MR. MER: Can you read back?

THE COURT: Read back, please.

(Read back.)

Yes, he sees a listing of numbers in a column that says Cash Capital One. He knows it's not in one bank account.

MR. MER: I'll move to strike that last part of the answer.

THE COURT: He said it many times. I'm not sure -- because it's not responsive to the question.

MR. MER: nd because he's testifying about what Mr. Bender knows without having any foundation for that. It's hearsay. He can't get into Mr. Bender's mind.

MR. ROBERT: ll of the questions were elicited to what Mr. Bender understood from the spreadsheet Mr. McConney sent. So, to me, it's a fair answer to a fair question.

THE COURT: Simple point is he doesn't know what Mr. Bender is going to think. So, I'll strike the last sentence or clause.

Q It wasn't a mistake, on your part, to include the Vornado cash in the same Column O as the other entity cash; that wasn't your intent, correct?

No. My premise is based on looking at this now is

that's where Vornado has their cash.
Q Let me go back to my question. My question was simply that it wasn't a mistake on your part to put the Vornado cash in Column O; it was your intent do so, correct?
The preparer of this statement, I'm assuming, knew where the funds were that Vornado had. So, the intent was to put it in the column with the bank where the funds were.
Based on the way this schedule is supposed to be prepared, we had put the Vornado cash in the column where the cash was maintained at Capital One.
Q I'm just going to try, again, to see if I can get a responsive answer. It's very simple. Including the Vornado cash in Column O was not a mistake, it was something you intend to do?
MR. KISE: Objection. This has been asked and answered about a dozen times. He's given the same answer. It wasn't his intent, and, Mr. mer wants to testify, but, the witness has already answered and said exactly why he put it where he put it. That's what he said multiple times.
THE COURT: Overruled. He hasn't answered the question yet. It's a very simple question. I can't state it any better than Mr. mer did.
Were those numbers in Column O the way you wanted them to be or were they a mistake?

THE WITNESS: Without looking at the backup, your Honor, knowing where Vornado has their cash, if their cash was in a different bank, it was a mistake. If it was in Capital One, we put it in the column where all the other entities had their cash at Capital One.
Without the backup and looking at the actual source document, I can't answer the question.
THE COURT: Mr. mer, what do you want to do?
MR. MER: One more followup.
Q So, as I understand your testimony, you're saying as long as the Vornado cash was in an account somewhere within Capital One Bank, even though it was not a Capital One Bank that Mr. Trump controlled, then this was not a mistake? This was something you intended to do?
That's correct.
Q Let's switch now to a different asset. Let's talk about Mr. Trump's triplex.
MR. KISE: partment.
Q I'd like to discuss your valuation of that property. So, let's pull up the 2014 statement, PX-730, which is in evidence, and, let me first focus you on page six where it says: "Basis of presentation."
This would have been a statement that you reviewed, correct?
Yes.

Q It says: "The accompanying Statement of Financial Condition consists of assets and liabilities of Donald J. Trump. ssets are stated at their estimated current values. You understood, during the entire time that you were preparing the valuations from 2011 through 2016, that the valuations you were working on were intended to state the assets at their estimated current values, correct?
Correct.
Q Let's go back to Plaintiff's 3041. The defendant's response to Plaintiff's 202.8G statement. Let's look at paragraph 31.
gain, this is something that you filed in this case, and, you do not dispute that G P defines estimated current value as "the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing and neither of whom is compelled to buy or sell."
You understood, when you were working on the valuations, that the values had to be estimated current values and that estimated current values were this definition on the screen, correct?
MR. KISE: Objection. No foundation.
THE COURT: Overruled.
When we were preparing the Statement of Financial Condition, estimated current value, to me, has a wide range

of interpretation. There are a number of definitions. We may not have listed them all here, but, this is one of them, I believe.
THE COURT: Well, I'm sorry to interrupt. You said it's undisputed. You're not disputing the statement that's highlighted in yellow. So, what are we talking about?
MR. KISE: He didn't say that. That's a response.
MR. MER: He filed --
THE COURT: He's a defendant.
MR. KISE: But, your Honor. So, this is one piece of the puzzle. What's undisputed is that was the definition under that one section, but, there's 20 more pieces to the puzzle after that, and, that's in our statement of facts.
They just want to ignore the rest of it. So, yes, G P has those words in it, but, G P has another paragraph that tells you how you compute estimated value.
MR. MER: I'm concerned when we argue about objections that we end up with testimony.
MR. KISE: It's not fair --
MR. MER: Excuse me. Let me finish. We have a witness on the stand, and, you're making a very lengthy speaking objection in the presence of the witness, and, I

think that's objectionable. So, if we can just have an objection and get the Court's ruling without a whole explanation that educates the witness that is here in the room on the stand --

MR. KISE: I'm not trying to educate the witness. You asked me a question, your Honor, and I'm trying to explain why it says what we said. That's what you asked. If you want to do side-bar --

THE COURT: I didn't ask a question, I remember.

MR. KISE: You said it's undisputed. What is the issue and I'm explaining what the issue is.

THE COURT: I didn't ask you. I was asking the witness. In any event, you can cross-examine.

MR. KISE: Correct.

THE COURT: I don't think there was a foundation need or any explanation needed. You want to ask it again?

MR. MER: Sure.

Q Let me back up a bit. You understand that the Statement of Financial Condition had to be G P compliant unless there was a specific departure from G P indicated, correct?

I'm not a G P expert.

Q Not my question, Mr. McConney. I'm not asking you about G P regulations. I'm asking you a broader question,

which is, you understood that the Statement of Financial Condition had to be G P compliant, whatever that ment, they had to be G P compliant unless there was a departure from G P specifically noted; is that correct?

Yes.

Q You agreed, in this filing, that G P defines estimated current value exactly as quoted here.

MR. MER: That's a stipulated fact, your Honor, which I ask the Court to take judicial notice of.

THE COURT: Well, I'd rather he said it; but, we can get to judicial notice, if necessary. I think sometimes the questions are a little longer than they need to be.

Did you understand that, pursuant to G P, the definition of estimated current value is as indicated up there?

THE WITNESS: That's part of the definition. That are many ways to come up with estimated current value. If we didn't list them, I'm sorry.

Q Let me see if I can parse this. You say many ways to come up with estimated current value and I'm asking you what estimated current value is, however you come up with it, okay.

So, there's methodology and then there's the result. Did you understand that the result of whatever methodology you used had to be, at the end of the day, the

amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing and neither of whom is compelled to buy or sell?

Yes.

Q Okay. Let's look at the 2012 Jeff Supporting Data and that's in evidence. We'll put it up on screen, the native.

Do you recognize this as your Jeff Supporting Data that was provided to Mazars?

Looks like it, yes.

Q We've had testimony from Mr. Bender that this was the control version because it has PBC, provide by client, and it has the various tick marks numbers, the blue numbers. Does that sound right to you?

That sounds right, yes.

Q Let's go to row 833. This is the section that discusses the triplex, correct?

Line 833 and line 834, yes.

Q Okay. There's a value in G and there's a value in H and it covers -- it gives you two years, the current year and the prior year, correct?

Can you just scroll up so I can see which is the current year and which is the prior year?

Q Sure.

It should be at the top of these -- used to be a

page.

Q So, G is 2011. H is 2012. Correct?

Yes, sir.

(Continued on following page..)

Q So, if we go back, you will see that for 2011 it's $80 million, and 2012, it increases by $100 million to 180; correct?
Yes, sir.
Q nd let's -- and you say, underneath triplex, "Per email from Kevin Sneddon," and that's the explanation for the jump of 100 million to 180 in 2012; correct?
Yes.
Q nd you provided backup for this; correct?
Yes.
Q So why don't we look at Plaintiff's Exhibit 1052.
(Whereupon, a document was displayed, and handed to the witness.)
Q Mr. McConney, these are a series of emails between you and individuals employed at the Trump Realty -- Trump International Realty; is that right?
MR. MER: Your Honor, I offer this into evidence.
MR. ROBERT: Statute of limitations objection.
THE COURT: It's a continuing objection. I don't really care, but it's a waste.
MR. ROBERT: We still feel that we need to preserve the record, your Honor.
THE COURT: Despite what the ppellate Division said? I mean, Court of ppeals? Because --

MR. ROBERT: My understanding of that decision is that had to do with testimony, and the trial judge had to be given an opportunity to correct it at the trial level, to be available, and that's why we bring it up. I may be reading it incorrectly, but from my reading, it was testimony.
THE COURT: I don't want to tell you what to do. So, you can object every time.
nyway, granted and it's in evidence, over objection.
(Whereupon, Plaintiff's Exhibit 1052 was received in evidence.)
Q Mr. McConney, if you can turn to page two of the exhibit, I want to focus you on your email to Kathy Kaye dated September 19th, 2012. Do you see that?
Yes.
Q m I correct that this is your effort to reach out to Ms. Kaye to get information for you to value the triplex?
Yes.
Q nd Ms. Kaye is one of the top people at Trump International Realty; correct?
Yes.
Q nd is it okay if I refer to that entity as TIR?
Yes. That's the way I do it.
Q Okay. nd TIR is an in-house real estate broker;

correct?
Yes.
Q nd you say in your email to Ms. Kaye, "Justin told me about the apartment he is going to video on the west side. I'm trying to value DJT's triplex," and then ask you a series of questions. What building is the unit in; what's the asking price for the unit; how many square feet is the unit; correct?
Yes.
Q You are looking for a comp for Mr. Trump's triplex; correct?
Correct.
Q Is Justin somebody who works at TIR?
Justin, I believe, worked for the Trump Organization. I don't think he worked for TIR.
Q nd you understood he was going to video the apartment to put it up for a listing; correct?
Yes.
Q nd then the top email, Ms. Kaye emails Mr. Sneddon and copies you and says, "Kevin, please provide Jeff with the prince's details. I'm not near a computer. Thanks;" right?
Yes.
Q nd Mr. Sneddon is another top person at TIR?
Yes.
Q Just so we are not confused by the prince's details, did you understand that that apartment that was going to be

listed was owned by a Saudi prince?
I don't know about Saudi, but I think, I have some remembrance, that it was owned by a prince, or some royalty of some sort.
Q So, it's not a typo. She's really asking for the prince's details?
That's what I remember.
Q Okay. Then Mr. Sneddon responds and he says, and you're copied, "I already valued DJT's triplex for lan." You understood that to be llen Weisselberg; right?
Yes.
Q nd he goes on to say, "Our 75 million-dollar triplex lifting is in 240 RSB."
Is that 240 Riverside Boulevard?
Yes.
Q nd that's a Trump-developed property?
t the time, yes.
Q Okay. nd he says, "Total square footage is 14 and a half thousand, including main residence, guest residence, and staff residence. sk is 5000-plus per foot."
Did you understand that to be per square foot?
Yes. $5,000 per square foot.
Q So, he provided you with some of the information that you asked for; correct?
Yes.

Q nd then you ask him to send you the email he sent to Mr. Weisselberg; right?
Yes.
Q nd then he responds, " t 30,000 square feet, DJT's triplex is worth 4,000 to 6,000 per foot, or 120 million to 180 million;" right?
Yes.
Q Okay. nd this is a point in time where you're still using 30,000 square feet for the valuation of Mr. Trump's triplex; right?
I don't know if it's the point in time, or that's when we started. I don't remember exactly when we started using 30,000 square feet.
Q Okay. nd this is the information that you then use to put a value on the apartment for 2012 of $180 million?
Right.
Q It's fair to say you took the upper end of the range that Mr. Sneddon provided; correct?
Correct.
Q Now, there are two components to the formula that you used to determine the value. One was the square footage. There's been a lot read and argued about that, but the other component is the price per square foot; correct?
Yes.
Q Okay. nd so here, the price per square foot that you

used for the 2012 valuation was 6,000 per square foot; is that right?
Yes.
Q nd you base that off of the information you received about the listing at 240 Riverside Boulevard; right?
Sorry. Can you say that again?
Q Sure. You're basing that off of the listing for the apartment, the comp that was at 240 Riverside Boulevard, that you were communicating with Ms. Kaye and Mr. Sneddon about; right?
Well, I'm basing it on the email from Kevin, the 30,000 square feet, and the 4,000 to 6,000 per square foot. I think the question about the apartment for sale was the starting point, and this is, basically, where we ended up.
Q Well, Ms. Kaye's email said that the listing was going to be at 5,000 per square foot, and you picked -- and Mr. Sneddon gave you a range of 4,000 to 6,000, so isn't it correct that that range was based on the listing price for the comp at 240 Riverside Boulevard?
I don't know what Kevin's thought process was. It could be based on this, if you can draw that conclusion, but I don't know if that's what Kevin was basing it on.
Q Well, it's the mid point of the range that he gave you; right?
Yeah. Mathematically, yes.

Q nd your inquiry was about that apartment, and his response was in response to your inquiry; right?
Yes.
Q Okay. nd you probably talked to Mr. Weisselberg about this valuation; correct?
We may have, at some point in time. I don't remember a specific conversation.
Q Well, do you recall that Mr. Weisselberg felt that going with the high end of the range at $180 million was appropriate, and represented the value of Mr. Trump's triplex, based on what Mr. Sneddon told you?
Can you say that again? I was kind of --
Q Sure. Is it correct that you reviewed this with Mr. Weisselberg, and he felt going with the high end of the range $180 million, represented the value of Mr. Trump's triplex, based on what Mr. Sneddon had provided to you?
That would be my assumption. Yes.
Q Well, I'm asking you for your best recollection. Is that fair?
Yes.
Q nd you would agree that for purposes of valuing a property for the Statement of Financial Condition in order to get to an estimated current value, that it is better to use an actual sale price, rather than an asking price? Correct?
MR. KISE: Objection. Foundation.

THE COURT: Combination. Foundation.
MR. KISE: Foundation. He already testified he is not a G. . .P. expert. He has his understanding of what estimated current value is. I'll stop there.
THE COURT: Overruled.
So, can you ask the question again, please?
MR. MER: Your Honor, can I get a read back.
THE COURT: That's the way to do it.
Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
MR. ROBERT: Same objection.
THE COURT: Same ruling. Overruled.
I don't think that's -- I think -- there are many ways to value assets in a Statement of Financial Condition.
Q Let me just go right to your testimony, from the interview. I'm going to put up page 307, line 13 to 307 -- to 308?
THE COURT: When you say interview, do you mean deposition?
MR. MER: This is his interview under oath during our investigation. So, we don't call it a deposition. It's an investigatory interview, your Honor.
THE COURT: Thank you.
Q "Question: Why use an asking price, and not an

actual sale?
" nswer: We asked ourselves the same thing a few years ago, and we stopped using asking prices, and did sale prices. I don't know why we used asking prices at that time, but we realized it was probably better to get an actual selling price.
" nd why is that?
" nswer: Because you can ask anything you want to. Like, we can ask for 291 million for houses on Seven Springs. It doesn't mean you want to pay that. But, that's what our asking price, if you want to buy it. So, based on that theory, we thought it was a good determining factor at the time, and when we thought about it some more, we figured out, it's better to use selling prices."
That was your sworn testimony; correct?
Yes.
Q nd isn't it correct that when you are valuing a property based on comps using actual sale prices as opposed to asking prices, it's not just the better practice, it's the right way to do it?
MR. ROBERT: Objection.
THE COURT: Grounds?
MR. KISE: gain, foundation. It's the same question, the same problem. It's the same disconnect. I'm loathe, because they are going to throw their pens in the

air, I'm loathe to explain it, but it's the same principle. He has already said there's multiple ways to get there. Mr. mer is now asking if that's the right way. This is the whole point of the case, there is no one right way. So, he is mischaracterizing the evidence in the record. I'll put it that way.
nd, this witness isn't a G. . .P. expert, so he can't testify to what's the absolutely right way. He has already said his view, multiple times. There are many ways.
THE COURT: I think any high school student knows the right way. I'm overruling the objection.
Q I'll ask the question again. You would agree that when you are valuing a property based on comps, using actual sale prices, as opposed to asking prices, is not just the better practice, but it's the right way to do it; isn't it?
MR. KISE: Same objection.
No.
Q You think it's okay to use asking prices when you are looking for comps to value a property at it's estimated current value? Is that your testimony?
Yes, sir.
Q Do you know whether this comp at 240 Riverside Boulevard, the prince's apartment, sold? nd for how much?
I do not.

MR. MER: I would like to introduce Exhibit 3037.
(Whereupon, a document was displayed, and handed to the witness.)
MR. MER: Your Honor, I move to admit this exhibit for grounds of notice, that it was public record that the sale occurred.
THE COURT: But do we know that they knew about it? nd are you arguing constructive notice?
MR. MER: We are arguing that it was something that was in the public domain, that he could have learned about from this article.
(Whereupon, there was a pause in the proceedings.)
MR. ROBERT: Your Honor?
THE COURT: Go ahead. Sorry.
MR. ROBERT: It's a 2018 article. We are talking about 2012 valuation. Its hearsay, and we are not accepting what the New York Times says is accurate.
THE COURT: I believe that some or all of the defendants had actual notice of this. They asked about it, and were told.
But, Mr. mer, can you resolve this issue?
MR. MER: The question for -- so, the witness thinks it's appropriate to use asking prices. The fact

that this apartment sold --
THE COURT: I think he said they are just different ways. He didn't say asking was the only way, or the correct way. He said it was one way, I think.
MS. H BB : Thank you.
MR. MER: He said it was an acceptable way.
THE COURT: cceptable. That's not the way. That's an acceptable way.
MR. MER: I meant to convey something different. I'm sorry.
He is taking that position now, on the stand, and the fact that it was in the public domain, that this apartment sold for $30 million --
THE COURT: Public domain doesn't do it. I think there was a lot more than public domain.
Q Do you know, Mr. McConney, whether your colleagues in TIR were aware of the sale of this apartment when it happened, many years later, at a much lower price than the asking price?
I have no idea what they knew.
MR. MER: We'll come back to this, your Honor.
THE COURT: Fine.
Q Let's look at the 2013 value, and let's put up the 2014 JSD, because that will give us both the 2013 value and the 2014 value; correct?
Yes, sir.

Q Okay.
MR. MER: So, that is Exhibit 719, and it's a native file.
(Whereupon, a document was displayed, and handed to the witness.)
Q If we go to rows 843 and 844 -- and we actually don't have to find the date, because it's the same value for both dates; correct?
Yes.
(Continued on the next page.)

Q Two hundred million in both years, and in 2013, it's based on Kathy Kaye.
Is that an e-mail from her, ugust 2013?
I'd have to look at the backup but, yes, it's an e-mail from her.
MR. MER: Okay. Let's go ahead and mark 714.
THE COURT: Ten-minute warning, everybody.
Q This is an e-mail exchange you had with Ms. Kaye, correct?
Yes, sir.
MR. MER: I move this into evidence, your Honor.
MR. ROBERT: Same objection. Statute of Limitations.
THE COURT: Same ruling. Granted. It's in evidence.
Q nd the top e-mail from Ms. Kaye to you is the e-mail that you're referencing in the spreadsheet for your $200 million value; is that right?
I believe ugust 19, 2013 was the date on the spreadsheet. Can I look at the spreadsheet before I say yes or no?
Q Sure. Going back to 719?
ugust, yes. That is the e-mail we based it on.
Q So, let's go back to the e-mail. She says at the

top: "Doing the list now. s far as DJT's." Did you understand that to mean Mr. Trump's triplex?
Yes, sir.
Q "One unit just sold for over 5,000 a foot. However, another just came on the market at over 11,000 per square foot." You see that?
Yes, sir.
Q Then she says: "Which is not necessarily indicative of the market," right?
Yes, sir.
Q You understood that what she was saying was the asking price of over 11,000 per square foot didn't necessarily indicate what the market would actually pay for that apartment, correct?
I took the whole, the two sentences before. "One just sold for 5,000 a foot. One just came on the market for 11,000 a square foot. It's not necessarily indicative of the market." I took both of those sentences.
Q In any event, she was telling you the information she was sharing with you was not necessarily indicative of the market, right?
Yes.
Q Then she says: "Based on the activity in the luxury market and given how unique the apartment is, as well as tied to celebrity, I don't see how one would list below 8,000 a

square foot at this point which brings us to @ 240 million." Then she says: "200 million is a safe estimate," correct?
Yes.
Q So, you go with what she claims is a safe estimate?
Yes.
Q We can agree that the item that she says is 11,000 per square foot is just a listing price and not an actual sale price, correct?
I believe that to be correct, yes.
Q That's what you understood at the time, right?
Yes.
Q She's obviously using the 30,000 square foot figure because she's saying 8,000 per square foot, right?
Yes.
Q Do you know if she is the person at TIR who decided to list the Prince's triplex at $75 million?
I have no idea.
Q Okay. I'm correct that this one e-mail from Ms. Kaye, that we've just reviewed, is the sole basis for your valuing the apartment in 2013 at 200 million; is that right?
That's correct.
Q If we look at the spreadsheet again for the 2014 value, you indicate there that it's based on comps at 157. Do you see that?
Yes.

Q That's referring to a property on West 57th Street which is a very, very tall apartment building, correct?
Yes.
MR. MER: Let's go ahead and mark Exhibit 3044.
Q Mr. McConney, is this your backup for getting to the $200 million value for 2014 based on comps at 157?
I believe so, yes.
MR. MER: Your Honor, I ask that this be admitted into evidence.
MR. ROBERT: Statute of Limitations objection.
THE COURT: Overruled. Granted. In evidence.
Q What you're doing here, Mr. McConney, is you're taking all of the units on floors 50 and above that sold in 2014 at the building 157 and you're calculating, based on those sales, a price per square foot of 6,733; is that right?
Yes.
Q Then you take that number and you multiply it by 30,000 to get to the value of 201,990 which you round, for purposes of the statement value, to 200 million; is that right?
Yes.
Q The second and third pages are printed from StreetEasy.com listing the sales; is that right?
I believe that's correct, yes.
Q Did you consider StreetEasy.com to be a reliable

source for real estate apartment sales information?
Yes.
Q You relied on it, correct?
Yes.
MR. MER: I'm going to mark as Exhibit 3035. This, your Honor, is something we printed outlast week from the StreetEasy.com website for building 157 and I'd ask that this be admitted into evidence based on the witness's testimony that he relied on this site and considered it to be reliable.
MR. ROBERT: Objection, your Honor. The witness relied on what's already in evidence. This is just hearsay. This is something he printed out on October 1, 2023. He didn't rely on this document about 157.
MR. MER: His testimony was that the site was reliable, not that the specific printout that he was looking at was the only thing that was reliable.
MR. ROBERT: In the year that you're questioning him about.
THE COURT: How about if we just mark it as an exhibit?
MR. ROBERT: For identification?
THE COURT: Yes, for identification.
MR. ROBERT: Thank you, sir.
THE COURT: Okay.

Q Mr. McConney, you'll see that the StreetEasy.com site that you said was reliable, indicates that this building was built in 2013, correct?
Yes.
MR. MER: Let's go ahead and mark as Exhibit 3036 for identification a StreetEasy.com listing for Trump Tower, the building in which Mr. Trump's triplex is located.
Q You'll see, that according to StreetEasy.com, the site you testified was reliable, Trump Tower was built in 1983. Do you see that?
Yes.
Q Do you have any reason to disagree with either of those dates?
No.
Q So, Trump Tower is 30 years older than 157, correct?
Yes.
Q If you look at the second page of the exhibit, let's look at 3035, page two, you'll see there's a section that says: "Building facts."
You see that?
Yes.
Q It says under "sales listings: 245 previous sales at 5,369 per square foot average." Do you see that?
Yes.

Q So, that's the average price per square foot for apartments in 157, correct?
MR. ROBERT: Objection.
THE COURT: Ground?
MR. ROBERT: It's hearsay.
THE COURT: By the way, in one of these listings, I forgot which, the first amenity was elevator. I would hope so.
It's an out-of-court statement being introduced to prove the truth of its contents, isn't it? So, I'm not sure what exception you want to try to put this under.
MR. MER: Your Honor, again, this is a website that the witness has, himself, relied on for his own valuations. So, I think it is appropriate based on his own testimony that this exhibit be admitted into evidence.
THE COURT: I don't think that alone does it.
Q Mr. McConney, did you look at StreetEasy.com to determine whether apartments, on average, were selling for a price per square foot in Trump Tower at a price that was anywhere equal to what apartments were selling for in a building that was built 30 years later, 157, when you decided to use 157 as a comp for Trump Tower?
No.

THE COURT: Last question then we'll take a break.

MR. MER: Okay.

THE COURT: Last question or short series of questions. Lawyers do that all the time. They say one question and we get ten.

Q When you decided to use 157 as a comp for Mr. Trump's triplex in Trump Tower, did you look at any of the factors such as building amenities, age of the building, or any other type of factor when deciding whether you might need to adjust pricing up or down to make it comparable to Mr. Trump's triplex?

Not that I remember, no.

MR. MER: Okay. I think this is a good spot.

THE COURT: The usual ten-minute break over the course of 15 minutes.

(Recess taken.)

THE COURT: Okay. Let's pick up where we left off.

Q I have one more valuation on the triplex that would go to a different asset. So, let's put up the 2016 Jeff Supporting Data spreadsheet, Exhibit 742. It's already in evidence. nd row 913 is where the triplex section starts. gain, it's the same value but goes up to 347 million for 2015 and 2016. Do you see that?

Can you scroll to where it has the June 30th dates again?

Q Sure. There they are.

Yes. June of '15 and June of '16, yes.

Q Okay. If we go back to '13, you'll see it says: "Triplex based on comps from TIR sales office 30,000 square feet at 10,900 per square foot."

MR. MER: By the way, I have one more demonstrative to hand out which is charts that show all the values for properties on one chart. So, this is PBS 3.1 through 3.11.

Q So, there's a different chart for each asset and the first page is the triplex. I just put this up because it's an easy way to appreciate that the values in 2015 and 2016 are the highest values for the triplex in this 11-year period. Correct?

Yes.

Q Okay. Let's look at Exhibit 1037.

MR. MER: Why don't we give this to the witness. We'll put it on the screen. It's a one-page document.

Q Do you see that this is an e-mail from Naomi Muramatsu to Mr. Weisselberg which he then forwards on to you, correct?

Yes.

MR. MER: I'd ask that this be admitted into evidence, your Honor.

THE COURT: Granted. It's in evidence.

Q Since Mr. Weisselberg's e-mail-- and, by the way, based on the date of this e-mail, this is being sent to you for purposes of preparation of the valuation for 2015 which was still happening in March of 2016, correct?

I believe that's correct, yes.

Q Mr. Weisselberg has forwarded you this e-mail from Ms. Muramatsu. gain, she's in TIR, correct?

I believe she was running TIR at the time.

Q Okay. She says to Mr. Weisselberg: "There are very limited number of buildings that sell premium price, especially larger units and I just looked at the closed sales data for the following building, which most likely to be the highest." She lists 15 WPW. That's Central Park west, right?

I believe so.

Q So, 157, the building you used for comps before, correct?

Yes.

Q 432 Park venue, right?

Yes.

Q Was the instruction that was given to TIR that they should find comps for the triplex by looking at buildings with closed sales most likely to be the highest?

I don't know what llen's instruction to Naomi was, Ms. Muramatsu.

Q When you communicated, in prior years, to TIR, was that the marching orders to find buildings with the highest price per square foot?

I don't remember telling that to anybody. I tried or I asked them to find comps.

Q t any rate, her e-mail to Mr. Weisselberg indicates that she was trying to find buildings that were most likely to be the highest, correct?

Yes.

Q Then the next paragraph she says: "Highest was 9,390 per square foot, correct?

Yes.

Q That's at 15 Central Park West only 2761 square feet for 29995, correct?

Yes.

Q Then she says: "Highest among the larger units." So she's commenting that this unit at 15 Central Park West was a smaller unit, correct?

Yes.

Q Then she says: "Highest among the larger unit was 9,198 per square foot at 157, Unit 90." You see that?

Yes.

Q Then it says: "10,923 square feet for 100,471,453.

Correct?
Yes.
Q Now, if we put the this next to the spreadsheet just so we can compare it. Spreadsheet is 742. You see in the spreadsheet you indicated 30,000 at $10,900 per square foot? Do you see that?
Yes.
Q Can we agree that your price per square foot is based on the 10,923 number. Right?
Yes.
Q nd that was a mistake, wasn't it?
Yes, it was. I picked up the square foot, not the dollar amount per square foot.
Q Right. So, you used the square footage of the apartment instead of the price per square foot, which was 9,198. Right?
Yes.
Q We can do some court math, but, if you'll allow me to round up 9,198 to 9,200, the difference between the figure you used of 10,900 and the actual price per square foot rounded to 9,200 is 1,700; and, if you multiply that by 30,000, it comes to $51 million.
Does that sound about right?
I'll have to take your word for it.
Q 1700 times 30 is 51 and, so, this is a $51 million

mistake in each of the two years, correct?
Yes.
Q If you had realized, Mr. McConney, at the time that you were doing this valuation, that the correct price per square foot was $9,198, would you have instead chosen, as a comp, 15 Central Park West because that had a higher price per square foot of $9,390?
I can't make that statement. I don't know what my thought process would be.

(Continued on following page..)

Q Was it your intention at the time to choose a price per square foot that would give you the highest value for the triplex?
We were looking to get a comp for -- so, we were looking for the price per square foot that would give us what we thought Mr. Trump's apartment was worth, compared to what was sold out there. I'm not sure that answers your question, or not.
Q It doesn't, so let me try again.
Looking at this now, and seeing that the 15 Central Park West per square foot was actually higher than the one, the price per square foot at 157, had you known that at the time, would you have picked 15 Central Park West as the comp, because you were looking to get the highest number you could for Mr. Trump's triplex?
No. We weren't always looking for the highest price. This had 10,900 square feet, so it was closer in size to what we thought the square footage was to Mr. Trump's triplex at the time.
Q Let's turn our attention to 40 Wall Street.
MR. MER: Let's put up the 2012 Jeff Supporting Data spreadsheet. It's 793.
(Whereupon, a document was displayed, and handed to the witness.)
Q If we go to row 110, that's the beginning of the

section for 40 Wall Street.
I'm sorry, could you just do me a favor and scroll up, so I know what year?
I guess its only one column, so it's only 2011.
2012. Okay. ll right. So this is all 2012. Thank you. Sorry.
Q nd so rows 131 to 133 provide the note that indicates how you came up with your valuation that landed at 527,200,000; correct?
Correct.
Q Okay. nd your note says, information provided by Doug Larson at Cushman & Wakefield, Inc., which reflect cap rates of 4.23 percent and 4.39 percent for similar-sized office buildings at 14 Wall Street and 4 New York Plaza; correct?
Yes.
Q So, let's just go over some background for this type of valuation. This valuation takes net operating income, divided by capitalization rate, to get to a building value; is that right?
Yes.
Q nd the lower the cap rate, the higher the value, because the formula uses the cap rate as the denominator; correct?
Yes.
Q Now, Doug Larson is an appraiser with Cushman &

Wakefield; correct?
Yes.
Q nd he is person that you indicate in the note you got information from; right?
That's correct.
Q I'm correct that the Trump Organization had not retained Mr. Larson or Cushman to conduct an appraisal of 40 Wall Street; right?
That's correct.
Q nd the Trump Organization had not retained Mr. Larson or Cushman & Wakefield to provide you with a cap rate that was applicable for 40 Wall Street; correct?
That's correct.
Q In this note, what you are referring to Mr. Larson having provided you with is a generic market report from Cushman & Wakefield; right?
Yes.
Q nd that generic market report is not a report that Cushman prepared specifically for the Trump Organization; right?
That's correct.
Q That is a generic marketing report that Cushman mails out, or emails out, to a large customer base as a service that it provides; correct?
I have no idea what they do with it.
Q t any rate, it's not anything that you paid for;

correct?
That's correct.
MR. MER: Let's look at Plaintiff's Exhibit 794.
(Whereupon, a document was displayed, and handed to the witness.)
Q Mr. McConney, is this back-up material that you provided to Mr. Bender in connection with your supporting spreadsheet?
The documents, yes. The computation in the middle, I don't think that's mine.
THE COURT: You need to talk in the microphone. Sorry?
THE WITNESS: It's like an adding machine tape of some sort, in the middle, I don't believe I did. But, the documents are mine.
MR. MER: Your Honor, I ask that this be admitted into evidence.
MR. ROBERT: Statute of limitations objection.
THE COURT: Objection overruled. Request granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 794 was received in evidence.)
Q I would like to focus you on the second page of the exhibit.
MR. MER: If we could put up the spreadsheet

that we were looking at, lines 131 to 133, now. The Jeff Supporting spreadsheet 793.
Q nd just focusing on the note in 131 to 133, does the page from Exhibit 794 on the left appear to be the backup for your note in the spreadsheet about how you got to the 4.31 cap rate average?
Yes.
Q You took two cap rates, one for 4 New York Plaza, one for 14 Wall Street, from the generic market report; you averaged them to come up with 4.31; right?
Yes.
Q nd the next two pages are the backup material. That is, 794 are pages from that generic market report; right?
That's correct.
Q nd it contains a description of the two properties you used for the average. It's the second and third properties on the list; correct?
Yes.
Q nd the cap rates are listed under the column, O R, which stance for overall rate of return; right?
I think so. Yes.
Q t any rate --
I use that as my cap rate.
Q Understood. That was the column that would have the cap rate that you used; right?

That's correct.
Q nd again, because the cap rate is the denominator in the equation, the lower the cap rate, the higher the property value. The higher the cap rate, the lower the property value; right?
Yes.
Q There are a total of eight properties listed in this generic market report. The two you selected and averaged were the second and third lowest cap rates; right?
Yes.
Q If we look at the next property after 14 Wall Street, it's 33 Maiden Lane; correct?
Yes.
Q If we just look at the description it says, This is a Class office building. Do you see that?
Yes.
Q nd 4 New York Plaza, which is a building you selected to use, is also a Class office property; correct?
Yes.
Q 33 Maiden Lane has a higher cap rate of 4.74; right?
Yes.
Q If you had included that in your average, it would have drove the cap rate up; right?
The cap rate would have gone up, yes.
Q nd you did not use 33 Maiden Lane; correct?

That's correct.
Q nd the next building is 199 -- sorry 195 Broadway, and that's a landmark Class office building; correct?
Yes.
Q nd 14 Wall Street is also a landmarked Class , but it's a Class -minus office building; correct?
Yes.
Q nd 195 Broadway has a higher cap rate of 6.3 percent. Do you see that?
Yes.
Q If you had used that in your average, it would have driven the cap rate up; correct?
Yes.
Q You did not include that building in your cap rate equation; correct?
That's correct.
MR. MER: Your Honor, this is just math, so the Court can take judicial notice of it, but I'll represent to you that if you include those additional two cap rates and you took the average from all four, the cap rate would be 4.915 percent, and it would lower the value by $65 million.
THE COURT: Well, subject to the math being correct, I'll take judicial notice of that. Yes.
MR. MER: Thank you, your Honor.
THE COURT: It sounds about right.

MR. MER: Let's look at 2014 Jeff Supporting Data, Exhibit 719.
(Whereupon, a document was displayed, and handed to the witness.)
Q nd 40 Wall Street starts at row 118.
I'm sorry, which? Looking at the 2014 column? Column H?
Q We are going to look at column G first, which is 2013.
Okay.
MR. MER: nd go to row 118.
Q That's 40 Wall Street; correct?
Is that a question for me? Yes.
Q Yes. Okay?
Yes.
Q nd you used the same 4.31 cap rate as in the prior year that we have just discussed; right?
Yes.
Q It's based on the same backup we just went through; correct?
Without looking at my backup, it's just an assumption. I didn't have a note here, for some reason.
Q nd if we look at column H, it shows the valuation for 2014 at rows 138 to 141; right?
Right. Can you scroll up a little bit, because there may be some notes there. I'm sorry, the page up, or I guess

looking down. Right. There's the -- my notes. Okay. Sorry. Can I just read the notes now?
Q Sure.
Okay. So the answer to your last question about 2013 was yes. We used the same, 4.31.
Q Just so the record is clear, you are now looking at rows 155 to 158, and you can confirm that it's the same description for your valuation of 2012 and 2013; right?
Yes.
Q Okay. nd then rows 148 through 152 is your note for the valuation for 2014; correct?
Correct.
Q nd you used a cap rate there. gain, it's information provided by Doug Larson; right?
Correct.
Q nd it's the same type of generic market report that we have been talking about for Mr. Larson; correct?
That's correct.
Q nd the cap rate of 3.04 percent for 100 -- sorry. I just caught myself. So, you used the cap rate for 110 William Street of 4.97 percent, and then another building, 61 Broadway, was 4.46 percent. You then say, according to Doug, the spread between Class and Class B buildings is typically 150 basis point. To be conservative, you reduced the cap rate by 75 basis points to 3.71 percent, and then you averaged that with the

4.97 percent. Is that right?
Yes.
Q nd am I correct, Mr. McConney, that during the period we have been discussing, covering the 2012 to 2016 Statements of Financial Condition, while you were receiving and using these Cushman generic market reports that you were getting from Mr. Larson to calculate your cap rates, you were aware that Mr. Larson was preparing formal appraisals for 40 Wall Street for the bank that had the loan on the property; right?
I'm not sure I knew at the time that Doug was doing those appraisals.
Q s you sit here right now, you are not sure that he was doing those appraisals?
t that time, I know at one point in time we were -- we were refinancing 40 Wall Street, I don't remember what year it was, and I know he was doing an appraisal because I was heavily involved in it. I'm not sure every single appraisal that Doug did for that period of time, I was aware of.
Q Mr. McConney, weren't you the conduit for information from Mr. Larson, for purposes of him doing his bank appraisals for 40 Wall Street?
I remember -- again, I remember the one loan that we were doing. I don't remember all the appraisals that he was doing. I could be -- again, I don't remember being the conduit.
Q My question is very simple.

Mm-hmm.
Q Isn't it a fact that you, Mr. McConney, were the conduit for information on behalf of the Trump Organization to Mr. Larson in connection with his bank appraisal, bank appraisals that he was doing during the period 2012 to 2016 that we have just been discussing?
You are saying -- I'm saying I'm not sure I was the conduit for every single appraisal.
Q nd I'm not asking you if you were the conduit for every single appraisal, but you were the conduit for information for Mr. Larson for bank appraisals he was doing for 40 Wall Street. Let's leave it at that. Is that correct?
Yes.
Q Okay.
MR. MER: Let's look at Exhibit 3047.
(Whereupon, a document was displayed, and handed to the witness.)
Q These are emails -- this is an email exchange you have with Mr. Larson; correct?
Yes, sir.
MR. MER: Your Honor, I ask that this exhibit be admitted.
MR. ROBERT: Statute of limitations objection.
THE COURT: Objection overruled. Granted. It's in evidence.

(Whereupon, Plaintiff's Exhibit 3047 was received in evidence.)
Q Let's look at the bottom of the email. This is from Mr. Larson to you, and it's dated October 13, 2011. "Jeffrey, we have been engaged by Capital One Bank to prepare an appraisal of 40 Wall Street. ttached please find a list of information we need to prepare the appraisal."
He gives you this phone number, and tells you you can call him.
"Hope all is well, thank you, Doug;" right?
Yes, sir.
Q So you knew, as of October 2011, that Mr. Larson was preparing an appraisal for 40 Wall for Capital One Bank which, at the time, was the bank that had the loan on 40 Wall Street; correct?
Yes. Thank you for jogging my memory.
Q Happy to oblige.
Now, let's look at the top email, and this is from you to Mr. Larson. "Doug, a couple of quick questions. You are asking for lease abstracts for the most recent leases. How far back should I go? The last appraisal was done in ugust 2010."
Do you see that?
Yes, sir.
Q So you know, in October of 2011, he is doing -- he is currently doing an appraisal, and you also knew that he had done one the prior year; right?
It looks that way, yes.
Q Okay.

MR. MER: Let's look at Plaintiff's Exhibit 3046.
(Whereupon, a document was displayed, and handed to the witness.)
Q This is an email from Mr. Larson to you dated October 15, 2012; right?
Yes.
MR. MER: Your Honor, I ask that this be admitted into evidence.
MR. ROBERT: Statute of limitations objection.
THE COURT: Occasion overruled. Granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 3046 was received in evidence.)
Q Mr. Larson says, "Jeff, we have been engaged by Capital One Bank to prepare an appraisal of the above property," which is 40 Wall Street; right?
Yes.
Q "The following information is requested in order for us to prepare the appraisal," and he lists a bunch of information; right?
Yes.

Q So a year later, Mr. Larson is doing another appraisal, and you are the person he contacts and tells he is doing it, and requests information; right?
That's correct.
Q So you knew in October of 2012 that Mr. Larson was doing, now, his third appraisal for 40 Wall Street; correct?
Yes.
MR. MER: Let's go ahead and mark Exhibit 3048.
(Whereupon, a document was displayed, and handed to the witness.)
Q This is an exchange, an email exchange between you and Mr. Larson in May of 2015; correct?
Yes.
MR. MER: Your Honor, I ask that this exhibit be admitted into evidence.
MR. ROBERT: Statute of limitations objection.
THE COURT: Objection overruled. Request granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 3048 was received in evidence.)
Q The bottom email is yet another email from Mr. Larson to you, telling you he has is been engaged by Ladder Capital. That's the bank that refinanced the loan; right?
This is the one I remember. Yes.
Q Okay.

Yeah.
Q I'm glad to hear you remember this one, but there are three others before this one.
Yes. I just didn't remember those at the time. This is the one I do remember.
Q Okay. nd once again, he is telling you he has been engaged to do an appraisal of 40 Wall Street, and he is asking you for information; right?
Correct.
Q You write to him in response and you say, Doug -- this is the second line.
Okay.
Q "Doug, Steve Lafiosca, copied on this email, can help with you the inspection. Based on the appraisals you have done in the past, do you have any of the below information in your files," right?
Yes.
Q So you are basically wondering, since he keeps coming to you year after year asking you for all this information, why he doesn't have it already, since he has been doing all these appraisals before; right?
I just asked him if he had it, yes, and if he could use it.
Q Well, you are asking him if he had it in his files, because you were aware of all these appraisals he has been

doing; right?
Seven years ago, yes.
Q Seven years ago. We were looking at 2012. That's three years ago; right?
No. In 2015, I knew that. That was eight years ago, from today. t that point in time, I probably knew it. I don't remember it now.
Q I understand what you are saying. So, we can agree then, having now had your recollection refreshed by looking at all these emails, that you, during the period that you were working on preparing the Statements of Financial Condition from 2012 through 2016, you were simultaneously acting as the conduit for information for Mr. Larson, so that he can prepare formal appraisals for 40 Wall Street? Right?
Yes.
Q nd while you were acting as the conduit to provide information to Mr. Larson, I'm correct that you never sought to use any of the Cushman appraised values for 40 Wall Street in the Statement of Financial Condition; correct?
That's correct.
(Continued on the next page.)

Q nd during the period of time that you were acting as the conduit of information for Mr. Larson for his appraisals at 40 Wall Street and you were using his generic market report for your cap rate calculations, you never asked Mr. Larson if the cap rates you were selecting were appropriate. Isn't that right?
No. I mean, it's correct. Yes.
Q During this period of time when you were acting as the conduit to provide information to Mr. Larson so that he could do his formal appraisals, you never asked Mr. Larson what cap rates he was using for any of the Cushman appraisals at 40 Wall Street; isn't that right?
I believe that's correct, yes.
MR. MER: Can we put back up the Jeff Supporting Data spreadsheet at 742, the native?
Q I want to go back to your note at row 153 that explains the basis for the cap rate. This is your note reflecting that you chose a cap rate of 3.04 percent for 100 Wall Street, correct?
Yes.
Q You say it's based on a telephone conversation with Doug Larson. You see that?
Yes.
Q Okay. The cap rate of 3.04 percent for 100 Wall Street was selected by you from the generic marketing report

you got from Cushman; is that right?
Yes. I believe so, yes.
MR. MER: Why don't we put up Plaintiff's Exhibit 868.
Q Mr. McConney, this is an e-mail from you to Mr. Bender which encloses an attachment, correct?
Correct.
Q The attachment is an excerpt from the 2015 Cushman appraisal of 40 Wall Street, right?
Yes.
Q So, it's clear, you did have a copy of the Cushman 2015 appraisal when you forwarded this e-mail to Mr. Bender, right?
Yes.
MR. MER: I ask that this be admitted into evidence, your Honor.
MR. ROBERT: Statute of Limitations objection.
THE COURT: Overruled. Granted. It's in evidence.
Q Let's look at the 11th page of the exhibit. Now, Mr. McConney, the highlighting is not anything we're putting up there. This is in the exhibit, correct?
Yes.
Q You're sending this to Mr. Bender. Did you highlight this so he could see where you were getting the cap rate from?

I believe so, yes.
Q Okay. Now, we do have, and this is what you sent to him, but, the appraisal itself is a much larger document, correct?
I believe so, yes.
Q What you sent him was what you picked out of the full appraisal to share with him, correct?
I don't remember picking out certain pages but I sent it to him.
Q Okay. You sent him only a portion of the appraisal report, right?
Yes.
Q What you sent him was what you intended to send him?
Yes.
MR. MER: Okay. Let's go ahead and mark the full appraisal report.
THE COURT: Ten-minute warning.
MR. MER: Just when I hand up a very large document. It's going to be a challenge.
THE COURT: I hope you can finish the document before we leave.
MR. MER: I think we'll be okay.
Q This is starting at page eight of the document. You'll see the cover page for the appraisal.
Do you see that?

Yes.
Q It's the same 2015 appraisal that you sent an excerpt of to Mr. Bender, correct?
Can I have that last exhibit back, please? Yes.
MR. MER: Your Honor, I ask Exhibit 118 be admitted into evidence.
MR. ROBERT: Statute of Limitations objection.
THE COURT: Overruled. Granted. It's in evidence.
Q Let's turn to page 15 of the appraisal report. gain, this is something you had in your file and you have looked at?
I had or had not?
Q You had looked at it because you sent a portion of it to Mr. Bender, correct?
Correct.
Q Okay. Let's look at the cap rate that Mr. Larson used based on his professional appraisal, 4.25. Right?
There are a number of cap rates here. It's one of them that he used, yes, that is.
Q That is a different and much higher cap rate than the one you used in the same year of 3.04 percent, correct?
Yes.
MR. MER: Let's go to -- I will represent to you another math point, your Honor, that if you use Mr.

Larson's cap rate of 4.25, instead of Mr. McConney's cap rate of 3.04, the new value is $227 million lower than the value that Mr. McConney calculated.
THE COURT: Those cap rates are really important, but, I'll take judicial notice of that, subject to checking the math.
MR. MER: Just so you have it, the new value is 569 million which is $227 million lower than the value in the Statement of Financial Condition. Let's go to page 100 in the appraisal report.
Q Mr. McConney, this is a description of comps that is in the appraisal report; and, in fact, Mr. Larson looked at 100 Wall Street which was the basis for your choosing 3.04 percent, right?
Yes.
Q Okay. Let's go to page 105 and that begins the discussion of the comparables in his appraisal and he discusses 100 Wall Street. You see that? It's the very first comparable sale.
Yes.
Q Okay. If we look at the last paragraph in this section, Mr. Larson says: "In comparison with the subject property, a downward adjustment was required for property rights conveyed. downward adjustment was required for the size under the premise that smaller properties sell for more

per square foot than larger properties."
Do you see that?
Yes.
Q Okay. So, Mr. Larson a professional -- he's a professional appraiser, right?
Yes, he is.
Q He looked at the same property that you used as the basis for your cap rate, and, he did two downward adjustments, and, he ended up choosing a cap rate that was higher than the one you chose.
He chose 4.25 percent, right?
He chose 4.25 on that prior page you looked at. I don't know where that 4.25 came from.
Q He looked at the same property, 100 Wall Street, that was the basis for your cap rate, right?
Yes.
Q He did two downward adjustments, correct?
Yes.
Q You didn't share this page with Mr. Bender when you sent him the excerpts from the appraisal, did you?
I'd have to go back and look.
Q I'll represent to you, you did not.
I believe you.
Q Okay. So, Mr. Bender was not aware that Mr. Larson had reviewed and downwardly adjusted the very property that

you used as the basis for your cap rate, correct?
MR. ROBERT: Objection.
THE COURT: What's the objection?
MR. ROBERT: Before Mr. mer talked about what Mr. Bender knew. It wasn't part of what he said. We don't know what Mr. Bender knew.
MR. MER: I can rephrase it.
THE COURT: Sustained.
Q Mr. Bender would not have known, based on what you sent him, that Mr. Larson had looked at and downwardly adjusted the very property that you relied on for your cap rate. Isn't that fair?
That's correct but he could have asked for the whole appraisal, also.
Q I'm just asking you based on what you sent to him. You would agree that this process of making adjustments to comp sales, in order to compare them to the subject property, is what appraisers routinely do so that the comps better reflect the value of the subject property; isn't that right?
I don't know what appraisers do. I don't know how they make these adjustments. I see on this one. I don't know what they do as a general practical matter.
Q t no point when you were selecting cap rates from the generic market reports, did you undertake any efforts to make adjustments to the compensation so that they better

reflected the value of 40 Wall Street; isn't that correct?
That's correct.
MR. MER: I'm at a good point, your Honor.
THE COURT: Okay. We need to talk to the attorneys about scheduling, but I promised to Chris Kise to teach him some New York history.
Does anybody know how Maiden Lane got its name? If you ever see it, you'll see it's sort of a depression in the area. Mr. Kise, because there was a stream. Back in colonial times, young women would take their wash to the stream to wash it, and they were called maidens. That is how it got to be called Maiden Lane.
THE COURT: Now, llison has some business to conduct.
MS. GREENFIELD: Thank you, Judge. So, I assume we're going to be continuing for with Mr. McConney tomorrow. How long do we anticipate cross? Is there going to be cross tomorrow?
MR. KISE: No.
MS. GREENFIELD: How much more direct?
MR. MER: I'm going to say I'm half way through.
MS. GREENFIELD: Who is after Mr. McConney?
MR. SOLOMON: Mr. Weisselberg.
MS. GREENFIELD: That will be a full day, I

predict.
MR. ROBERT: Tomorrow is only a half day.
MS. GREENFIELD: Do we expect Mr. Weisselberg tomorrow or Tuesday? Monday is a holiday.
MR. MER: What I would say if I were to finish before the end of the session, it's going to be very close to the end of the session. So, we want to avoid having to inconvenience Mr. Weisselberg. We can say I'll go to whenever we stop and we'll be done.
MS. GREENFIELD: If we're beginning with Weisselberg Tuesday morning, who is after Weisselberg, if we know yet?
MR. ROBERT: They have Birney.
MR. W LL CE: The next Trump employee will be Patrick Birney but we took Mr. Kise's position to heart and are going to call Nick Haigh to appear in person rather than do a deposition while the trial is going on.
He will appear on the 11th. He has the 11th and the 12th he leaves the country. So, our expectation is we're going to work cooperatively to get through Mr. Weisselberg, depending on when he ends. Could be Mr. Haigh or Mr. Birney but those will be the next two witnesses.
MS. GREENFIELD: We'll revisit it tomorrow before we adjourn.

THE COURT: He's not leaving the country because of this case?
MR. SOLOMON: So we're clear, Mr. Weisselberg need not be here tomorrow?
THE COURT: Right.
MR. SOLOMON: We'll be finished for the day and if he's finished tomorrow, we'll pick up Mr. Weisselberg first thing Tuesday morning?
THE COURT: Yes.

(Whereupon, the trial is continued to October 6, 2023 at 10:00 a.m.)

$

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know of any others right now. That is the one that sticks out in my mind.
Q You would agree with me that the basis of valuation of the triplex was set forth in the Jeff Supporting Data?
Yes, sir.
Q The basis valuation for 40 Wall Street was set forth in the Jeff Supporting Data?
The method valuation, yes, sir.
Q The basis for the valuation of Trump Tower would have been set forth in the Jeff Supporting Data?
Trump Tower Commercial, yes, sir.
Q Basis for valuing Niketown would have been set forth in the Jeff Supporting Data?
Their methodology for valuating was included in the Jeff Supporting Data.
Q The basis of valuing Trump Park venue would have been set forth in the Jeff Supporting Data?
Their methodology for doing it would have been set forth in the Jeff Supporting Data.
Q Their methodology for valuing their interest in-- the Trump Organization's interest in 1290 venue of the mericas would have been set forth in the Jeff Supporting Data?
Mr. Trump's interests in 1290 --
Q Yes?
-- venue of the merica would have been -- their

methodology would have been set forth.
Q The method for valuing 555 California, President Trump's interest in that entity, that would have been set forth in the Jeff Supporting Data?
Yes, I believe it would have.
Q The method for valuing Seven Springs would have been set forth in the Jeff Supporting Data?
I believe it would be yes, sir.
Q The method for valuing Mar-a-Lago would have been set forth in the Jeff Supporting Data?
I believe that would be true.
Q So, every year, you were presented with the basis for valuation of each of these assets in the Jeff Supporting Data?
I believe, off the top of my head, that would be true, sir.
Q Yesterday, I think you said you had tremendous respect for Jeff, for Mr. McConney; is that correct?
He's one of the better accountants I ever worked with.
Q He passed along this information to you every year?
Him and Patrick Birney.
Q The Jeff Supporting Data was what you reviewed when preparing your compilation report?
Mazars would have looked at it. I don't know the word "reviewed".

Q Mazars would have looked at it but not necessarily you?
I may not have looked at every line of Mazars and -- say the question again.
Q Mazars -- someone from Mazars would have looked at all the Jeff Supporting Data but not necessarily you?
I can't say somebody from Mazars looked at every line of the worksheet.
Q You can't tell me whether someone from Mazars looked at every line on the worksheet?
I can't read somebody else's mind today.
Q You testified earlier you would responsible for all the work product that went into it?
bsolutely.
Q You agree you were responsible to make sure somebody at Mazars looked at every line on that spreadsheet?
I don't think a person at Mazars would need to look at every line on that worksheet. I agree I was responsible for the compilation, if it's the right word. I was the partner in charge of the compilation procedure.
Q You were the partner in charge of the compilation procedure. The buck stopped with you?
bsolutely.
THE COURT: Ten-minute warning.
Q If the buck stopped with you, Mr. Bender, would you

have not been required to sign off on the basis for valuing each of the assets and making sure it was consistent with estimated current values?
It we were not engaged, the compilation did not require us to do the work. The financial statement is the Trump Organization. They were the experts in real estate. They were the experts in golf courses and it was them.
If something, as part of a high-level review, if I noticed something, like 57th Street, I'd bring it to-- yeah, 57th Street.
If I brought something like 57th Street came to my attention, I'd do it, but, it was not our responsibility to. We were not engaged to discuss -- we were engaged to do method appraisals-- not appraisals. That was not part of our engagement.
Q ppraisals weren't part of your engagement?
We were engaged to-- to the best of my recollection, we were never engaged to do an appraisal for the Trump Organization.
Q Now, Mr. Bender, you told me that you were required to follow ICP guidelines, correct?
To the best of my ability.
Q nd when you weren't, you'd consult a specialist?
I would try to, if I something came to my attention.
Q re you aware that the ICP guidelines for the

compilation of personal financial statements require you, in connection with the compilation, to under ordinary-- excuse me. To "ordinarily, an accountant can compile personal financial statements based on the individual's representation of estimated current value of assets and the estimated current amount of liabilities."

You'd agree with that statement?

Can you read it, again, please?

MR. W LL CE: Objection. If he's introducing language from a document, we'd like that to be on the record.

MR. SU REZ: Sure. I'm happy to move into evidence what I believe was premarked and somebody will give me the number.

Q ICP personal financial statements. Chapter Two. 2.03, compilation of financial statements.

Have you ever seen the ICP guide for preparation of financial statements?

Yes, sir.

Q ll right. So, turn to page -- to chapter two, which governs a compilation of personal financial statements at Section 2.03. We've premarked this as exhibit D-950. It said: "Ordinarily, an accountant can compile personal financial statements based on the individual's representation of estimated current values of assets and the estimated

current amounts of liabilities. t a minimum, however, the accountant should obtain an understanding of the methods by which the individual determined the estimated current values of significant assets and the estimated current amounts of significant liabilities and consider whether the methods were appropriate, in light of the nature of each asset or liability."

MR. W LL CE: Your Honor, we'd like to note an objection to the use of this document at this time. It's dated May 1, 2008. I believe that this guidance has been -- was superseded in 2009. So, it wouldn't have been relevant in 2011, but, if he wants to ask the question, we want to note --

THE COURT: Your objection is noted. I don't know how much it changed or didn't change from that year, but, I'll take that into consideration.

Q Do you see that?

Yes.

Q Is that something you undertook with respect to the assets?

I don't recall. s counsel said, if this happened at the time and I don't recall -- we definitely looked at -- I don't recall today what we did.

Q You don't recall--

No.

Q -- your involvement with that, okay.

You see in Section 2.07: "Reporting or compiling personal financial statements. If the accountant --

Let me find it.

Q --believes --

THE COURT: It's on the screen.

THE WITNESS: Thank you.

Q --"that the methods used to determine the estimated current value of assets and the estimated current amounts of liabilities are not in accordance with statement of position 82-1 accounting and financial reporting for personal financial statements, ICP technical practice aids, or if he or she believes that the methods are not appropriate, in light of the nature of each asset and liability, he or she should consider whether modification of a standard report is adequate to disclosure the departure."

THE COURT: "To disclose."

Q "To disclose the departure."

"If the accountant determines that modification of the standard report is not adequate to indicate the deficiencies in the financial statements taken as a whole, the accountant should withdraw from the engagement and provide no other services with respect to those financial statements."

Do you see that?

Yes, I do.

Q Did you ever, prior to 2020, withdraw from the engagement with the Trump Organization?

No, I did not.

Q Did you ever, prior to 2020, give any indication to the Trump Organization that you disagreed with the methods used to determine estimated current values?

I don't believe it was required of me to do that per compilation procedure.

Q Did you ever, prior to 2020, advise the Trump Organization that you disagreed with any of the methods used to determine the estimated current value of the assets?

57th Street would be one example where I did disagree.

Q That is the only one?

The only one I'm thinking of now.

Q When you brought up your disagreement with 57th Street, what did the Trump Organization --

We had Mazars saying-- Trump Organization spoke about it.

Q They revised it to your satisfaction?

They revised it to our satisfaction, Mazars.

MR. SU REZ: Okay. I think I'm at a good point to take a break.

THE COURT: Like yesterday, we'll take a ten-minute break. Take 15 minutes, but, unlike

yesterday, unless there's some personal emergency, I'll be very strict. We're starting again in 15 minutes, whether you're here or not.

(Recess taken.)

(Whereupon, the witness enters the courtroom.)

THE COURT: Okay, counsel. Please, proceed.

Q Mr. Bender, please take a look at Section 2.05. "Personal financial statement, compilation of personal financial statements from the ICP ."

Do you see this?

May I have the original document, please?

Q Premarked D-950. It says -- I'd invite you to read along with me, Mr. Bender.

One second. Thank you.

Q "Before submission, the accountant should read the compiled personal financial statements and consider whether such financial statements appear to be appropriate in form and free from obvious material errors. In this context, the term error refers to mistakes in the compilation of financial statements, including arithmetical or clerical mistakes and mistakes in the application of accounting principles, including disclosure. Misstatements that may occur in personal financial statements prepared in conformity with Generally ccepted ccounting Principles include:

Number one: "The failure to record estimated

income taxes on the differences between the estimated current value of assets and the estimated current amounts of liabilities and their tax basis."

Two: "Failure to disclose the methods used to determine estimated current values and amounts."

Three: "Failure to record accounts on the accrual basis" and, number four: "Presentation of an asset or liability at an obviously inappropriate value or amount."

Do you see that?

Yes, sir.

Q In connection with the 2015 Statement of Financial Condition when you were preparing your Independent ccountant's Compilation Report, did you note that the presentation of any asset or liability was presented at an obviously inappropriate value or amount?

No. s part of my compilation procedure, nothing came to my attention at the time.

Q Okay. So, at the time, nothing came to your attention as the presentation of an asset or liability at an obviously inappropriate value or amount?

Correct.

Q In connection with the 2014 compilation report, did anything come to your attention as the presentation of an asset or liability at an obviously inappropriate value or amount?

Nothing came to my attention at that time.

Q Certainly, you didn't disclose to the Trump Organization or President Trump that any assets presented at an obviously inappropriate value or not?

No, sir.

Q In connection with the 2013 compilation report for Statement of Financial Condition, did you identify any asset that was presented at an obviously inappropriate value or amount?

t the time, the compilation report was issued, I did not -- I did not inform the Trump Organization of the presentation of assets or liability in misappropriate value.

Q Did you determine whether there was a determination of an asset or liability at an obviously inappropriate value?

t the time we issued the financial statement, nothing came to my attention.

Q In 2013 when preparing your independent accounting compilation report, did anything come to your attention about a presentation of an asset or liability at an obviously inappropriate value or amount?

I think you already asked, 2013, but, I repeat, no.

Q How about 2012? In connection with your preparation of an Independent ccountant's Compilation Report, did any asset strike you as being presented at an obviously inappropriate value or amount?

No, sir.

Q Did any liability strike you as being presented at an obviously inappropriate value or amount?

Not that I can recall at this time. No, sir.

Q In 2011, which you testified to on Monday, you were preparing your Independent Compilation Report, did any asset or liability strike you as being presented at an obviously inappropriate value or amount?

No, sir.

Q How about 2016? In 2016 did any asset strike you as being presented at an obviously inappropriate value or amount?

No, sir.

Q In 2017, when you prepared your Independent ccountant Compilation Report, did any asset strike you as being presented at an obviously inappropriate value or amount?

No, sir.

Q In 2018, when you were preparing your Independent ccounting Compilation Report, did any asset or liability strike you as being presented at an obviously inappropriate value or amount?

No, sir.

Q In 2019, in connection with the preparation of your Independent ccounting Compilation Report, did any asset in the President's Statements of Financial Condition strike you as being presented at an obviously inappropriate value or

amount?
No, sir.
Q Did any liability strike you as being presented at an obviously inappropriate value or amount?
Not that I recall at this moment.
Q In 2019, in connection with preparing your Independent ccountant's Compilation Report, did any asset strike you as being presented at an obviously inappropriate value or amount?
I'm sorry. Which year did you say?
Q 2019.
No, sir.
Q How about liabilities? ny liabilities strike you as being presented at an obviously inappropriate value or amount?
Not that I recall at this moment. No, sir.
Q Okay. In 2020, when you prepared the Compilation Report, the Independent ccountant's Compilation Report, did any asset or liability strike you as being prepared at an obviously inappropriate value or amount?
No, sir, not that I recall.
Q ll right. How about the failure to disclose the methods used to determine estimated current values or amounts?
In 2020, in connection with the preparation of your Independent ccountant's Compilation Report, did you note any failure to disclose the methods used to determine

estimated current values and amounts?
Did I note or notice?
Q Note.
Note. What do you mean by note?
Q Did you notice?
Okay. No.
Q You noticed. You did not notice a failure to disclose the methods used to determine estimated current values and amounts in connection with President Trump's Statement of Financial Condition of 2020?
No, sir. I don't recall.
Q Did you notice any failure to disclose the method used to determine estimated current values and amounts in connection with your Independent ccountant's Compilation Report for President Trump's Statement of Financial Condition in 2019?
I do not recall. No, sir.
Q Did you notice a failure to disclose the methods used to determine estimated current values and amounts in connection with your preparation of the Independent ccountant's Compilation Report for President Trump's Statements of Financial Condition in 2018.
Nothing came to my attention.
THE COURT: We're not going to go each year by year, are we?

MR. SU REZ: I'd-- not asset by asset but I'd like to get through every year.
THE COURT: I'm not going to let you do that. sk him if it happened in any year.
Q Did you ever notice in any year in the Statement of Financial Condition that we discussed here today, yesterday or Monday whether there was a failure to disclose the methods used to determine estimated current values and amounts with respect to any asset listed on President Trump's Statement of Financial Condition?
I do not believe so.
THE COURT: So, now, the record is clear for every year. Great.
MR. SU REZ: Thank you.
MR. ROBERT: Your Honor, if I may be heard on that, sir.
THE COURT: Yes.
MR. ROBERT: First of all, Mr. Bender's answer was "I don't believe so." So, I don't think that was as dispositive as he wants us to believe. If he wants to say no, it never happened, that's one thing.
In addition, the relief the ttorney General is seeking against all the defendants is extraordinary.
THE COURT: What does that have to do with anything?

MR. ROBERT: Because they're trying to lump together a sequence of years and based on the fact that they have individual defendants that they've named as well as entities, what happened in a specific year is crucially important. They're seeking a quarter of a billion dollars in damages for the defendants.
THE COURT: What does that have to do with anything?
MR. ROBERT: The severity and importance of making sure we go year by year because different people have different responsibilities year by year.
THE COURT: We're asking this particular witness.
MR. ROBERT: nd this particular witness is saying -- I think the answer was. Not-- let me make sure.
THE COURT: nswer is the same for every year, whether it was complete or not.
MR. ROBERT: Let me see what his answer was. Give me one moment, or, the Court Reporter can read back, with the Court's permission.
THE COURT: No.
He's asking the same question. He asked for 2020, 2019, 2018. I don't see the point to go through every single year. It's the same question and same

answer. So I asked counsel to ask for all the years and the answer is the same. Either he doesn't remember or he didn't. What's the difference? Jesus.

But I'll ask the Plaintiffs, do you want to go through every year or not? Because I could get reversed for not allowing him to ask for every individual year rather than lumping them all together.

What would you like me to do?

MR. W LL CE: Whatever your Honor wants.

THE COURT: I don't want to go through nonsense. So, let's move on. Objection overruled.

MR. KISE: So, to be clear, we're precluded from asking year-by-year questions in the course of this proceeding?

MR. W LL CE: I object.

MR. KISE: What we're driving at here is who, at Mazars, was responsible for conforming with the ICP standard each year. President Trump and the other defendants are accused of committing fraud in a repeated and persistent pattern, year by year by year each statement.

So, each statement, respectfully, your Honor, stands on its own. Each statement is a freestanding statement. Each certification is a freestanding certification. This is what your Honor has ruled, that

they're independent. So, it is crucial, we believe, for the government to establish that in each independent year, there are these infirmities and if they can't establish that, then they need to -- they've not met their burden of proof and I'll give you an example.

We're talking here about a presentation of an asset or liability at an obviously inappropriate value or amount. The government has introduced evidence of an alleged five or six hundred million dollar disparity on the Statement of Financial Condition for Mar-a-Lago. They've said it should be 18 to 27 instead of the six, seven, eight hundred that we have. That, to me -- I'm just --

THE COURT: You're talking to me or the press or the audience, Chris?

MR. KISE: I'm talking to you, your Honor. That, to me, you're asking why we have to go year by year.

THE COURT: You don't have to go year by year. You have to go every year and he said every year, the answer would be the same. We're wasting more time than if he just let him go through it but this is --

MR. KISE: We need to be able to put on our defense the way we think we should be able to put on a defense, year by year. They brought this case. It

involves millions of pages of documents. I'm sorry, your Honor, but, I think we should be entitled to go year by year because that's their burden of proof. If we're going to lump it all together and all the organizations together --

THE COURT: We're not lumping it all together. We're asking if the answer is the same for every year. Same for 2020. Same for 2019. Same for 2018. He said-- he can ask whether the answer would be the same for every year. You can argue for every year. His answer of 2013, '15 or '11 or '12 would be the same. That's your record. I don't see any way around that.

gain, I'll ask Plaintiff, do you want to hear it for every year or risk my being reversed because I wouldn't let them put on a defense in a really big case.

(Continued on the following page..)

MR. W LL CE: So the record is clear, we are happy to stipulate here that Mr. Benders' response will be the same from every year from 2011 to 2020.

THE COURT: That's my ruling. Objection overruled.

Q Mr. Bender, when you stay you don't believe so, do you know?

Read the question again?

THE COURT: Do you want read back?

Read back, please.

By the way, I do this same technique to try to save time, whether a big case or a little case. It's the same thing.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

THE COURT: So, let's move on with the next question.

Q Mr. Bender, I do not believe so, does that mean no?

Yes. That means no.

Q Thank you. nd Mr. Bender, for each and every year that you prepared a Statement of Financial Condition and didn't notice a failure to disclose the methods used to determine estimated current values and amounts, if you didn't notice a failure to disclose the methods used to determine estimated current values and amounts, you certainly couldn't have

communicated that to the Trump Organization; correct?
MR. W LL CE: Objection.
THE COURT: Correct. If he didn't notice, then he couldn't communicate it.
MR. SU REZ: I just asked the question, and I got an objection. I just want to make sure we all understand it correctly, your Honor.
THE COURT: Okay. If you don't notice something, you can't communicate it to someone else. Can we agree on that, counselor?
MR. SU REZ: Yes.
THE COURT: So, what's the point of asking the question?
MR. SU REZ: I would like the witness to make that record, that if he didn't notice it, he didn't communicate it. The point is to establish that he didn't communicate it, your Honor.
THE COURT: Yes. You did establish it, and he said he didn't notice it. But, I'll ask the witness to answer.
Did you communicate what you didn't notice?
THE WITNESS: The only change I would make is, he used the word, prepared. This was not a preparation. This was a compilation, so I just -- his question has to be adjusted.

If you say compilation, if I didn't notice it, I didn't communicate it on the compilation.
Q Mr. Bender, certainly when you prepared the 2015 Statement of Financial Condition --
MR. SU REZ: I'm going to stop. I'm going to withdraw the question. I'm going to speak more slowly.
Q Certainly, Mr. Bender, when you prepared the independent accountant's compilation report for the 2015 Statement of Financial Condition, you didn't forget all of the things that you learned when you prepared the independent accountant's compilation report for the Statement of Financial Condition in 2014; did you?
No -- say that again.
MR. SU REZ: I'm trying to adhere to your Honor's direction not to go year-by-year.
Q But, I'm simply trying to establish the fact, Mr. Bender, that, from year to year, you didn't forget what you learned the prior year in preparing a Statement of Financial Condition. Compilation report.
Generally, that would be true. I'm not saying I would remember line-by-line from the year before, but generally, that would be true.
Q But material issues that you learned in one year, you would remember the following year?
Generally, that would be true.

Q Or they would be reflected in your work papers?
Generally, that would be true.
Q nd the work papers were maintained by Mazars?
Yes, sir.
Q Would you review those work papers each year, before picking up on the following year's independent accountant's compilation report?
I don't recall if I didn't or I didn't.
Q You don't recall whether you, each year, before beginning the prior -- the current year's independent accounting compilation report, review the prior year?
I don't recall -- I don't recall.
Q Mr. Bender, at your deposition you testified that you spent 50 to 60 hours each year working on the Statement of Financial Condition compilation report; is that correct?
That would be an estimate. Yes.
Q Okay. It's an estimate. It would change from year to year.
MR. SU REZ: nd I'm not going to ask year to year, because I understand the Court's order.
Q That would be an estimate from the period of time 2011 to 2020, you spent about 50 to 60 hours a year?
That would be an estimate.
Q nd in your opinion, as the --
MR. SU REZ: Withdrawn.

Q nd as the partner in charge at Mazars, in charge of preparing the independent accountant compilation report for the 45th President of the United States, 50 to 60 hours a year was a sufficient amount of time for you to spend on that assignment; correct?
Yes, sir.
THE COURT: We are taking a very short break.
(Whereupon, there was a pause in the proceedings.)
THE COURT: Okay. Let's continue with where we left off.
Q nd within those 50 to 60 hours a year, approximately, that you spent compiling the Statement of Financial Condition for the 45th President of the United States, that was a sufficient amount of time for you to satisfy yourself that the statements did not fail to disclose the methods used to determine estimated current values and amounts?
I did the best, based on my professional skills, to meet those standards.
Q I'm sorry. I can't --
I did the best, based on my professional standards, to meet those.
Q You did the best, based on your professional standards?
My professional skills.

Q nd were those the professional standards for Donald Bender, or the professional standards of Mazars.

I used my best professional skills to meet the standards of Mazars. Of Mazars, and the ICP .

Q ll right. So you used your best professional skills. So, can we infer from your testimony that it was your best professional skills that the president had the benefit of, or can we infer from your skills that it was the benefit of -- from your statement that it was the benefit of Mazars' skills, that the president had the benefit of?

I thought you asked about me -- I method your question was addressed about me.

Q Well, was 50 to 60 hours a year sufficient for you to supervise everyone at Mazars that worked on this engagement?

Yes. I felt it was.

Q nd to adequately make sure that you could represent to the president that his Statements of Financial Condition did not fail to disclose the methods used to determine estimated current values and amounts?

We did our best to try to meet those standards, yes.

Q You tried your best?

Yes.

Q nd you tried your best, in those 50 to 60 hours a year, to make sure that Mazars US -- 2016, for example -- could represent to the president that all of the assets were

presented, all of the assets or liabilities, were presented at an amount that was not inappropriately -- that was not obviously inappropriate?

MR. W LL CE: Objection.

THE COURT: What's the ground?

MR. W LL CE: The question is completely unclear.

THE COURT: How about a rephrase?

MR. SU REZ: Sure.

Q The 50 to 60 hours a year that you worked on the Statement of Financial Condition, was that sufficient for you, Mr. Bender, to be comfortable signing the name, Mazars US , to the Statement of Financial Condition certifying that the assets were not presented at an obviously inappropriate value or amount?

I was comfortable signing the compilation. I did not need to certify anything. That was not an audit. This was a compilation. The standards for a compilation don't require us to certify anything.

Q Well, the standards for at compilation do require you to present a compilation report that notes whether any of the assets or liabilities are stated at an obviously inappropriate value or amount?

Yes, sir.

Q nd in 50 to 60 hours a year, you were able to satisfy yourself that the asset value that was stated -- and let's take

an example. Let's use a concrete example. Let's take 2013. Let's start with 2013. Fifty to 60 hours a year -- let's put up 2013.

(Whereupon, a document was displayed, and handed to the witness.)

Q Mazars and WeiserMazars, both of those logos on are the page, at the top. It says WeiserMazars LLP.

MR. SU REZ: Come on over. Next page.

Q Your signature, the assets.

Let's go through the assets. In 2013, in 50 to 60 hours a year, you were able to satisfy yourself that it was appropriate to list $339 million in cash, $339 million in cash, on the statement of assets in 2013, Mr. Bender?

On the Statement of Financial Conditions? I met the professional standard for a compilation. Yes, sir.

Q So, to meet the professional standard for a compilation and conclude that an asset or liability is not stated at an obviously inappropriate value or amount, in 50 to 60 hours a year, you could do that, to determine, just go through them, $339 million in cash and marketable securities?

Yes, sir.

Q nd in 50 to 60 hours a year, you were able to take Trump Tower at $526 million, and determine that Trump Tower, at $526 million, was not presented at an obviously inappropriate value or amount?

Based on my compilation procedures, nothing came to my attention.

Q nd in 50 to 60 hours a year, you were able to determine that Trump Tower being presented at $526,800,000 did not fail the compilation -- did not -- I'm sorry, the Statements of Financial Condition, it did not fail to disclose the methods used to determine estimated current value of that asset?

Say that again, please?

Q You were able, in 50 to 60 hours a year, to determine that the Statements of Financial Condition did not fail to disclose the methods used to determine estimated current value, estimated current value of that asset?

Nothing came to my attention, as part of my compilation procedures.

Q nd in 50 to 60 hours a year, you were able to determine that NikeTown, worth $287,600,000 in 2013, was appropriately listed, and that the Statement of Financial Condition did not fail to disclose the methods used to determine estimated current values and amounts?

Nothing came to my attention, as part of my compilation procedures.

Q nd in 50 hours a year, you were able to determine, 50 to 60 hours a year, approximately, you were able to determine that that asset was not presented at an obviously inappropriate value or amount?

Nothing came to my attention, as part of my compilation procedures.

Q nd in connection with 40 Wall Street, identified in 2013 at $530 million a year, Mr. Bender, you were able to determine that the Statement of Financial Condition did not fail to disclose the methods used to determine estimated current value and amount of that asset?

Nothing came to my attention, as part of my compilation procedures.

Q Okay. nd in 50 to 60 hours a year, Mr. Bender, you were able to determine that 40 Wall Street was not presented at an obviously inappropriate value or amount; is that correct?

Nothing came to my attention during my compilation procedures.

Q nd in 50 to 60 hours a year, Mr. Bender, you were able to determine that Trump Park venue, listed in the Statement of Financial Condition at $346,100,000, that the Statement of Financial Condition did not fail to disclose the methods used to determine estimated current value and amount for that asset?

Nothing came to my attention, during my compilation procedures.

THE COURT: Counselor, can we lump this all together? gain, using the same principles, you can ask him, for each item, whether 50 or 60 hours was sufficient.

I think that would make sense, but if you really want to do it, go ahead.

MR. SU REZ: I'm doing my best to lump this together, but I can't lump it together, your Honor, because each separate asset on the spreadsheet presents the basis for valuation, and Mr. Bender's testimony, I believe, is that within 50 to 60 hours a year, he was able to look at all of those valuations and make sure that they were properly listed, or at a minimum, that they were properly disclosed in the Statement of Financial Condition, what the basis for that methodology was.

THE COURT: Yes. The key word you used is, all. sk him if he would have the same answer to the same questions for each line. But all the lines --

MR. SU REZ: May I try to truncate is by saying --

Q Would you have the same answer to the same questions concerning the club facilities and real estate in New York, Florida, New Jersey, California, Washington D.C., North Carolina, and Scotland, at $1,656,200,000?

Nothing came to my attention as part of my compilation procedures.

Q Nothing came to your attention. Did anything come to your attention concerning the manner in which estimated current value and amounts for the Trump World Tower at United Nations

Plaza was disclosed in this financial statement?

No.

Q nd did anything come to your attention that would cause you to think that this asset was not presented at an obviously inappropriate value or amount?

No, sir.

Q Did anything cause you to think that it was presented at an inappropriate value or amount?

No, sir.

Q The Trump Plaza commercial and retained residential portions identified at $31 million, in 50 to 60 hours a year, is that something that you were able to determine that the Jeff Supporting Data that then was reflected in the notes, Mr. Bender, did not fail to disclose the methods used to determine estimated current values and amounts?

Nothing came to my attention.

Q Nothing came to your attention.

So, this is all work that you did in 50 to 60 hours a year?

My time would have been 50 to 60 hours a year.

Q Your time alone?

My time alone.

Q Sufficient?

On average.

Q On average?

Guesstimate.

Q I've been asked to bring them all together.

Okay.

Q nd in 50 to 60 hours a year, Mr. Bender, the Trump Palace, the Trump Parc, the Trump Parc East condominiums, those commercial portions, you were able to satisfy yourself that the Statement of Financial Condition did not fail to disclose the methods used to determine estimated current value and amounts for those three assets at $13,700,000?

Nothing came to my attention, as part of my compilation procedure.

THE COURT: Counselor, I don't talk just to hear myself. You seem to be doing the exact same thing, and I'm precluding you from doing it. You can lump together -- I thought you were just going to list the different properties, but to ask the question again, I'm not going to let you to that.

MR. SU REZ: Your Honor, here is the concern that I have: Every single Statement of Financial Condition lists the property differently. Every single Statement of Financial Condition, from year to year, identifies the properties differently. Mr. Bender just told you, your Honor, that he or Mazars retained the knowledge as to all material assets that went from year to year, and how those assets changed, and in 50 to 60 hours a year, Mr. Bender

satisfied himself that he could sign the name of a major international accounting firm on the Statement of Financial Condition, slapped their logo on it, and called it an independent compilation report.

THE COURT: Maybe that helps you. That is his testimony, yes. Or, you can ask him, Would your answer be the same to the same questions for all of the other properties on that sheet? That's all I'm going to let you do.

THE WITNESS: My testimony wasn't that, from year to year. I said, in each individual year, your Honor.

MR. SU REZ: nd that just reiterates the point as to why we have to go year by year, your Honor. Because in each individual year, his testimony may be different.

THE WITNESS: No. I said, I didn't necessarily compare to the previous year.

MR. SU REZ: He didn't necessarily compare to the previous year, which is even more important, because every single year, he had two rows of data presented to him; the prior year and the current year, and his testimony today is that he didn't compare to the prior year.

THE WITNESS: I may not necessarily have compared every item to the previous year.

THE COURT: Let me approach this a different way. How much longer do you expect this cross

examination to take?

MR. SU REZ: Your Honor --

THE COURT: That's a simple question.

MR. SU REZ: We have --

THE COURT: If you do it your way. Not my way.

MR. SU REZ: We have Statements of Financial Condition. I would work my hardest to be done today.

MR. W LL CE: Today?

THE COURT: Well --

MR. W LL CE: Your Honor, at this point I will raise that we have another witness who has come in from out of the town, now in second day of waiting outside, and if they are just going to do this, read every number and say, did he spend the 50 to 60 hours he already testified he spent, this is time wasting. I don't know why they think running out the clock is going to be helpful, but there's no jury. I don't know who we are performing for, at this point. The evidence is clear. He spent 50 to 60 hours a year. The statements say what they say.

THE COURT: I'll let --

MR. W LL CE: If we are going to go on all day with Mr. Bender, at some point we would like to have a conference, because we have a witness waiting.

THE COURT: I just want to point out to everybody, Mr. Bender is not on trial here. Somebody else

is, or various people are, on trial here.

MR. KISE: I would respectfully disagree with that, your Honor.

MS. H BB : s would I, your Honor.

MR. KISE: His credibility, his veracity, his thoroughness in conducting his job that he got paid millions of dollars a year to do. He was the CP . He had certain responsibilities under the ICP standards. Those responsibilities are laid out. If he didn't meet those standards -- he is sitting here answer after answer saying, Nothing came to my attention; I don't recall. The only things he seems to recall, with any degree of specificity, are what the Government wants him to recall. That's a fair summary of his testimony so far.

MR. W LL CE: The record saying what?

MR. KISE: So we need to be allowed to parse the evidence. We didn't bring this case.

THE COURT: But you don't -- you are not allowed to waste time. That's what this is becoming, going through every one of these and getting the same answer, when you can just say, Would your answer be the same.

nd, as I said, I do this in every trial, and you know what? No one has ever objected to it.

MS. H BB : Your Honor, if I may, this trial is different because we still don't even have clarity on the

years in question, and for my clients, frankly, it's incredibly important. My clients, some of them did the backup data, that he is complimenting my client from the stand, but I can't ask him specifically, and have no record as to what he relied on with my client Mr. McConney, for instance, or llen Weisselberg.

This is insane. We haven't gotten one answer out of him, and we have not objected to the fact that he is being evasive, but quite honestly, your Honor, he is. He has not answered one question. He has no memory today, as we sit here.

MR. KISE: I just want to be clear, your Honor.

THE COURT: Go ahead.

MR. KISE: The Government has brought a case accusing my client of a staggering fraud, and that is based on year-by-year. They pointed out to you, in this year they made these changes, in this year they made those changes. I mean, it's specific to year. But now, when it comes time for us to defend ourselves and point out the flaws in that case, they want --

THE COURT: You have had plenty of chances to defend yourself, and I've already ruled on them.

MS. H BB : No, your Honor. We disagree with that.

MR. KISE: With respect to intent, with respect

to materiality, and with respect to reliance, these concepts are very important, and so we'll attempt to streamline these as much as possible, but they gone back --

THE COURT: You haven't seen that, yet. I made a ruling, and he totally ignored it. I said, I'm not going to let you do property by property, and then he just went on, property by property.

MR. KISE: But we have to do property by property, because that's -- the devil is in the details. I'm sorry, but it is.

THE COURT: You can do property by property, and you can lump them all together. This is ridiculous.

To the reporters, I'm pounding the bench, again. This is ridiculous.

MS. H BB : That's the one thing I agree with you, sir. This is absolutely ridiculous.

THE COURT: There's no point in going through each line, when the counsel can ask the witness if his answer would be the same for each line. Then you have got your record on appeal, and then you have got whatever post-trial brief you want to say. I'm just being logical, here.

MR. KISE: I'm not sure -- let me be sure I understand what you are saying. So, you are asking us to go line by line, but just ask the same question for each

line?

THE COURT: I'm asking --

MR. KISE: Would your answer be the same -- for example, would your answer be the same as to Trump International Hotel and Tower; would your answer be the same as to Mansion at Seven Springs; would your answer be the same as to partnerships and joint ventures? I mean, I've never had to negotiate how to ask questions, as a defense lawyer, but -- and I think it's highly irregular. I think it makes -- I think it makes a very poor record, frankly.

So, this is why I think we should be entitled to present our defense the way we want to. It is going to take some time, but they brought a case that spans a decade, and accuses --

MS. H BB : Exactly.

MR. KISE: -- my client of massive and staggering fraud, they can't condense it all together, because they have a witness waiting, and it's inconvenient.

MS. H BB : nd your Honor, your order itself goes to, for instance, Mar- -Lago, famous Mar- -Lago, which we are clearly having a discrepancy for, on the value. How can you say that now we can't sit her and ask about the value of Mar- -Lago?

THE COURT: ll I'm asking is that you lump

things together, so we don't waste time. You can include Mar- -Lago and any other property in whatever question it is, but let's not waste time. I'm just being logical, here. I'm not going to let you ask every single line, when you can just ask, For all the lines, would your answer be the same. You will have your record, you will have what I've heard, and let's just move ahead. You are not going to get away with this.

MR. KISE: For the record, I object to that procedure, your Honor.

MS. H BB : s do I, your Honor.

MR. ROBERT: s do I.

THE COURT: Okay.

By the way, you don't even have to say every line on the page. You can say, Would your answer be the same for , B, C, D, E, F. You can name them all, but you don't have to ask the question again.

Q For the questions that we have just run through Mr. Bender, I'm just going to --

MR. SU REZ: Your Honor, I'm being very delicate, to make sure I don't re-ask the question.

Q But, I'm going to go through, and I'm going to question you, for the remaining assets, whether 50 to 60 hours a year was sufficient for you, number one, to determine that the Statement of Financial Condition did not fail to disclose the

methods used to determine estimated current values and amounts; and number two, that the asset was presented at a value or amount that was not obviously inappropriate.

I'm sorry. Nothing came to my attention, during my compilation procedures.

Q nd that was true --

MR. SU REZ: I'm sorry, your Honor.

Q But my question, actually, Mr. Bender, was a little different. My question wasn't whether anything came to your attention. My question was whether 50 to 60 hours a year was sufficient for you to determine that the Statement of Financial Condition with respect to, take the Trump International Hotel and Tower, New York, New York, did not fail to disclose the methods used to determine estimated current values and amounts, and presented the value or amount of that asset or liability, in a manner that was not obviously inappropriate.

I was able to meet my standards for my compilation procedures.

MR. SU REZ: The witness is being evasive, which is the reason we've got to go and try to pin him down. He testifies, 50 to 60 hours a year. I'm asking him, with respect to each asset, whether within those 50 to 60 hours a year, it was sufficient for him, the person who signed the accountant's compilation report, to determine whether two very basic and fundamental criteria had been met.

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That's the question. Was that enough time for you to make that determination? If his answer is yes, I'll say, same question. Same question for this asset. Same question for this asset. If his answer is no, I'll ask him the same question for each asset, same question for each asset, same question for each asset.

THE COURT: I think that's what I'm asking you to do.

MR. SU REZ: nd I'm more than happy to do that, your Honor. I'm certainly not intending to upset you or not follow the Court's orders but --

THE COURT: I have a thick skin, but it's really being pierced, here.

MR. SU REZ: But the answer that I'm getting from the witness is not responsive, candidly.

Q The question is, Mr. Bender, in 50 to 60 hours a year, were you able to determine whether the asset listed in this Statement of Financial Condition, with respect to each asset listed on the Statement of Financial Condition, the Statement of Financial Condition did not, number one, fail to disclose the methods used to determine estimated current values and amounts; and number two, present an asset or liability at an obviously inappropriate value or amount.

Was that enough time for to you make that determination?

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It was enough time for me to make that determination, based on my compilation procedures.

Q Okay. Same question for Trump International Hotel and Tower. Would you give me the same answer? Yes or no.

Yes, sir.

Q nd for Mansion at Seven Springs. If I asked you the same question, would you give me the same answer?

Yes, sir.

Q With respect to the partnerships and joint ventures, the first one, 1290 venue of the mericas, New York, New York; and 555 California Street, San Francisco, California, would you give me the same answer, if I asked you the same questions?

Yes, sir.

(Continued on the next page.)

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Q With respect to the Trump International Hotel and Tower in Las Vegas, Nevada, would you give me the same answer, if I asked you the same question?

Yes, sir.

Q With respect to Miss Universe Pageants, would you give me the same answer, if I asked you the same questions?

Yes, sir?

Q With respect to real estate licensing developments, would you give me the same answer, if I asked you the same questions?

Yes, sir.

Q With respect to the other assets, would you give me the same answer, if I asked you the same question?

Yes, sir.

Q Now, the other assets, the other assets are disclosed at a value of $337 million in this Statement of Financial Condition, correct?

Yes, sir.

Q You, Mr. Bender, made the determination it was appropriate to present them as other assets, to lump them together in the category of other assets?

It's the client's compilation. They prepared the financial statement. Yeah, they prepared the financial statement.

Q You understood which assets were included within the

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value of the other assets. Was that part of your mathematical calculation?

Yes, sir.

Q You went through all of the other assets and I, with your Honor's permission, I'd like to pull them up and walk through what other assets fold into other assets.

THE COURT: I'm not sure he understood the question before. I think isn't the question, do you know what the other assets were. I'll ask that question, all right.

Do you know what the other assets were?

THE WITNESS: I know a lot of them. I don't now them all for every year, off the top of my head.

THE COURT: Did you know them all for 2013?

THE WITNESS: I can't tell you today.

THE COURT: sk him what you want.

MR. SU REZ: Let's pull up the Jeff Supporting Data for other assets. I would just note that part of the argument that we've heard is that assets were moved in or out of this category over the years, for one reason other another, and, whatever motivations the government ascribes to them, that we don't agree with, but, certainly, certainly, the point is the independent accountant that looked at these Jeff Supporting Data in 50 to 60 hours a year was able to determine that they

should all be lumped together in the category of other assets and that that same independent accountant and his knowledge of the ICP guidelines carried that knowledge over from year to year, your Honor, and how those assets changed and what he looked at and whether those assets were lumped together into the category of other assets are the questions that I respectfully intend to ask the witness.

THE COURT: Let's start and see how it goes.

MR. SU REZ: Excellent.

Q Mr. Bender, other assets, The pprentice. Did you review the basis for including that asset into the category of other assets?

It wasn't a review but I was happy -- I was content with the classification at that time.

Q It was okay with you to classify that as other asset?

t that time, yes.

Q Okay. The Wollman Rink, were you able to classify that as an asset in the Statement of Financial Condition?

t that time, yes.

Q Is it still okay to call it an other asset? You keep saying "at that time" as if you'd change your mind and would call it another asset today. That would be okay with you?

I would be fine.

Q You'd be perfectly fine with calling that an other

asset. The President's family receivables, you'd be okay with calling that an other asset?

Yes, sir.

Q Trump Model Management disclosed to you $2 million. You'd be okay with calling that an other asset?

Yes, sir.

Q The Virginia Vineyards which, in 2013, were valued at $15,439,000, you'd be okay with calling that an other asset?

Yes, sir.

Q You made the determination it was okay to include that in the other assets?

The client made the determination. I did not have any problem at the time.

Q You had no problem in the manner in which it was disclosed in the financial statement?

Not at that time, no, sir.

Q How about today, you think it was inappropriate to disclose that?

s of today, I'm not on top of all standards as of today but I know of nothing --

Q When did you stop being on top of all standard?

I stopped doing compilations about two or three years ago.

Q Before that, you were on top of all the standards?

No but I have subject matter specialists who would

assist me, and I would able to consult people.

Q Starrett City ssociates, $10 million. It was okay for you to lump that into other assets? You didn't have an issue with how that was disclosed, Mr. Bender?

No, I did not have an issue.

Q Okay, the President's aircrafts which, in 2013, were disclosed at asset value of $52 million. You can see there the manner in which those asset values were derived at $52 million. You were okay lumping that into other assets?

I was okay at that time.

Q re you okay with it today? I'm trying to understand or qualify "at that time."

Yes. Yes.

Q Okay. The triplex --

MR. SU REZ: I think he I said it right this time, your Honor.

Q --listed there at $200 million, it was okay with you to lump that in as an other asset?

It was, yes.

Q Okay. The two homes in Palm Beach in 2013 listed as an asset of $9 million and $2,750,000, that was okay for you to list as an other asset?

It was okay.

Q In Beverly Hills, California the residence in Beverly Hills, $15 million asset, that was okay to lump it in?

It was okay at that time, yes.

Q The licensing deals, the management fees, and incentive fees, it was okay to lump those assets in as other assets?

It was okay at that time. Yes, sir.

Q Same question for the accounts payable. Okay to lump them in as other assets?

Those are the liabilities. I take it back. That is a liability on the other side and that's a --

Q Let's put a pause on that. So, in 2013 when you reviewed all of those assets, you were okay lumping them into other assets?

Mazars compiled the financial statement. We had no problem at that time.

Q Do you have a problem with the fact in 2013 all of those assets were put together and included as other assets in the Statements of Financial Condition?

We had no problem when we issued the statement.

Q Okay, at that time-- withdrawn. In connection with all the assets that we just discussed, the failure -- sorry. You did not know, in connection with all the assets that we just discussed, as other assets, you did not know or notice a failure to disclose the methods used to determine estimated current value among any of those assets?

Not that I recall at this time.

Q nd in your estimation, in the 50 to 60 hours you spent on this worksheet, you did not notice that any of these assets were presented at an obviously inappropriate value or amount, did you?
Nothing came to my attention when I compiled the 2013 --
Q 2013?
Yeah, it's not shown.
Q You would agree with me when you compiled 2013, you had in front of you the number used in '13 and the number that was used in 2012?
Yes.
Q So, you can see, for example, when you go all the way to the top, that the President's cash position in June 30, 2013 increased to $339 million from $169 million the year before?
His cash and marketable security balance.
Q Cash and Marketable Securities increased from $339 million from 169 the year before?
That's what it says. Yes, sir.
Q In the time that you spent reviewing that, you were comfortable that the method used to determine the estimated current value of all of these assets on the spreadsheet were properly disclosed in the Statement of Financial Condition?
When I was compiling it, not reviewing it. You said

reviewed. When I was compiling, nothing came to my attention or bothered me.
THE COURT: Five-minute warning.
MR. SU REZ: Let's move back to liabilities.
MR. W LL CE: The People would like to request a side-bar before we actually all leave for lunch. So, if that can be accommodated within the five minutes.
THE COURT: Let's do that. Great.
MR. W LL CE: Now or -- I think five more minutes and then we can talk.
THE COURT: Go five more minutes of testimony and then we'll talk.
Q Let's pull up the 2013 Statement of Financial Condition. Next page. Next page. Let's go to liability. Here you have the liabilities, Mr. Bender.
You correctly noted the accounts payable and accrued expense of liability of $20 million. In the 50 to 60 hours you spent, Mr. Bender, producing your Independent ccountant's Compilation Report for the 2013 Statement of Financial Condition, were you able to determine, with respect to accounts payable and accrued expenses, the Statement of Financial Condition did not fail to disclose the methods used to determine the estimated current value, the amount of that liability?
Nothing came to my attention during that time.

Q If I asked you the same question for the note related to Trump Tower, you'd give me the same answer?
Yes, sir.
Q If I asked you the same question for the secured lease bond related to Niketown?
Yes, sir.
Q The loan related to 40 Wall Street, you'd give me the same answer?
Yes.
Q The loans related to club facilities and related real estate, you'd give me the same answer?
Yes, sir.
Q The loan related to Trump Park venue, you'd give me the same answer?
Yes.
Q So, in reviewing and preparing your Independent ccountant's Compilation Report, you would have been apprised of the fact that there was a loan on Trump Tower, correct?
Yes, sir.
Q You would have been apprised to the fact that there was a loan related to 40 Wall Street?
Yes, sir.
Q You would have been apprised of the fact that there was a loan related to club facilities and real estate?
Yes, sir.

Q nd the loans related to club facilities and real estate, that's also grouping, correct?
Yes, sir. I believe so.
Q That reflects more than one loan?
I'd have to check. I'm not familiar with the debt on the club facilities at the time.
Q You certainly would have determined that was an appropriate way to disclose that?
Yes, sir.
Q You would have determined that loans related to Trump Park venue were appropriately disclosed?
Yes.
Q The loans related to the commercial and retained residential portions of Trump Plaza were appropriately disclosed?
Yes, sir.
Q Same question with the Trump International Hotel and Tower New York?
Sorry?
Q The loan related to the Trump International Hotel and Tower New York?
Nothing came to my attention.
Q The loan related to the mansion at Seven Springs, you would have determined that was appropriate to disclose at that time?

Nothing came to my attention, so I agree.
Q So, you agree. Same question for other mortgages and loans payable?
Nothing came to my attention.
Q Same question for commitments and contingencies?
Nothing came to my attention, your Honor.
Q Same question for the net worth calculation for 2013?
That's math. plus B should equal C.
Q So, nothing came to your attention that the Statement of Financial Condition in any way failed to disclose the methods used to determine estimated current values with respect to the statement of net worth, correct?
Statement of financial conditions not the -- you used the statement of --
Q The statement of net worth. It says net worth there.
Okay.
Q You described as a -- what you described as a mathematical calculation of assets minus liabilities, correct?
Yes, sir.
Q We take all of the assets that you said in the prior page, you spent the time to determine there was no failure to disclose the estimated current value of those assets, the methods for determining the estimated current value of those assets and you subtracted from them all of the liabilities for the-- that are listed on this page and I think your testimony

was, you determined that there was no failure to disclose the methods used to determine the estimated amounts of those loans?
I believe.
Q So, if you were to subtract those two, you wouldn't take issue with the computation of net worth either?
Sorry?
Q You would not take issue with the computation of net worth?
Nothing came to my attention.
Q t 4.9 million?
Nothing came to my attention.
Q This is the review that you conducted in 50 to 60 hours?
This is a compilation that I prepared in 50 to 60 hours.
Q If I were to ask you --
If I were to ask you the same questions with respect to the presentation of an asset or liability at an obviously inappropriate value or amount, the 50 or 60 hours was sufficient for you to determine with respect to this Statement of Financial Condition there was no presentation of asset or liability as an obviously inappropriate value or amount, you'd have the same answer?
Yes, sir.

THE COURT: Okay. Let's do what we said. ttorneys stay. Everybody else, 2:15. Thank you.

(Luncheon recess taken.)

(Continued on following page..)

F T E R N O O N S E S S I O N.

THE COURT: Counsel, we're going to accommodate a witness. We're taking a witness out of order. Mr. Bender will be testifying later after we finish this testimony.
Who are you calling?
MR. G BER: People call Camron Harris. Judge, I've been admonished to introduce myself to the Court.
THE COURT: Can't hear you.
MR. G BER: My name is Sherief Gaber. We spoke last week. Feels like last year's arguments.
THE COURT: Please keep your voice up.
Most of you don't realize this but this is a very important day. I believe -- correct me if I'm wrong -- it's Kevin Wallace's birthday.
MR. W LL CE: Thank you, your Honor. This is a living nightmare for me.
THE COURT: Happy birthday. Is this how you're celebrating?
MR. W LL CE: Just happen to be surrounded by people I love.
MR. ROBERT: Up to this line.
(Whereupon, the witness enters the courtroom.)
C M R O N H R R I S, called as a witness, having

been first duly sworn, was examined, and testified, as follows:

THE COURT: State your name and home or business address on the record.

THE WITNESS: I'm Camron Harris. Work address: Whitley Penn. 8343 Douglas venue Dallas, Texas.

DIRECT EX MIN TION

BY MR. G BER:

Q Good morning, Mr. Harris.

Good afternoon.

Q You just gave us your name and place of business. Can you just state your employer and title, for the record?

Yeah. My employer is Whitley Penn. Title is audit partner.

Q Mr. Harris, were you involved in the engagement compiling of a 2021 Statement of Financial Condition of Donald J. Trump?

Yes, sir.

Q Mr. Harris, how long have you been employed there?

Over 19 years.

Q Can you describe your educational background?

I graduated from Texas Tech with an accounting and management degree.

MR. KISE: Is his microphone on?

THE COURT: You have to speak right into it,

clearly.

I graduated from Texas Tech with a management and accounting degree and I'm a CP .

Q I believe that you said you were an audit partner, Mr. Harris. Can you describe that role?

Yes, as an audit partner, I lead multiple teams that are in charge of doing attestation work for numerous clients.

Q s audit partner, did you have a role in any of Whitley Penn's audit engagement for the Trump Organization?

I only work on attestation engagements.

Q ll of the attestation agreements?

Correct.

Q So, Mr. Harris. I'll bring up a document that Plaintiff's have marked PX-1498 for identification.

re you familiar with this document, Mr. Harris?

Yes, sir.

Q Can you describe what this document is?

Yes. This is our client acceptance procedure memo. This memo details out the work that we did, forbearance proposal, and onboarding process and determining if this was a client that we were going to take on.

Q When you say this was a client, can you clarify?

Restate, please.

Q Who is this?

The engagement that we do for the Trump

Organization.

Q Is this memo kept among the work papers for this engagement?

Correct.

MR. G BER: I'd like to move this into evidence, Judge.

THE COURT: Granted. It's in evidence.

Q So, Mr. Harris, I'd like to direct your attention to the top of the second page of this document, if you would.

It says: "On ugust 17, 2021 Camron Harris, Randy Gregg, Jeff Lawlis held a call with Mark Hawthorn and Jeff McConney. During this call we went through all the prior years' audit and compilation records and asked various questions about the operation and each of the entities. We also discussed the clients acceptance inquiry outlined above. Management provided and answered all questions adequately and was forthright in providing all necessary information."

Was-- the meeting occurred as described here?

Yes.

Q Who is Jeff McConney?

Jeff McConney was the Vice President of Finance.

Q t the Trump Organization?

Yes.

Q Who is Mark Hawthorn?

Mark Hawthorn's role was CFO at the Trump

Organization over the resort properties.

Q Was the Statement of Financial Condition of Donald J. Trump one of the audits and compilations discussed on this call with Mr. Hawthorn and Mr. McConney?

I believe so.

Q Do you know what or can you describe what role Jeff McConney played in the SOFC engagement?

Yes, Jeff was one of our main points of contact as we were going through that compilation. He's reviewed a lot of the work prior to it being provided to us.

Q Same question for Mr. Hawthorn.

Mr. Hawthorn was not involved in the Statement of Financial Condition.

Q Now, move down to the third to last paragraph on this document. It's right there above the section called "background check." It says that-- I'm sorry. It's the one starting on September 1, 2021. It says that "Camron Harris Randy Gregg and Jeff Lawlis held a call with Jeff McConney. During this call we discussed and asked questions regarding the DJT SOFC and reviewed the prior year report."

Is prior year review a requirement of compilation engagement?

No.

Q Can you tell me what you recall of the discussion at that meeting?

We would have gone through the 2020 Statement of Financial Condition that was provided by Jeff McConney to us and just read through it trying to get an understanding of what was included, what the process entailed, and how we were to obtain information and then we asked the client acceptance inquiries as well.

Q Prior year inquiries aren't required, as I believe you just testified. Why were you reviewing the previous year's SOFC?

We all prefer to get the prior year papers, if we can, to obtain a better understanding of the work audit that was done in the prior year and to help us, aid us as we begin to plan for potentially doing this engagement.

Q Did you ultimately accept that engagement?

Yes.

MR. G BER: Can I bring up 1497.

Q Mr. Harris, I've handed you a document marked Plaintiff's Exhibit 1497 for identification. Do you recognize this document?

Yes, sir.

Q Can you tell me what this document is?

Overall compilation program. So, this program is sort of built out into three sections. planning section or work papers section and then a reporting section. This program is promulgated from the compilation guidance SS RS

which is made by the ICP .

So, this is our guide whenever there is a compilation that shows all the steps that we need to complete as part of the compilation.

Q nd is this for the Statement of Financial Condition engagement, this particular compilation program?

Correct.

MR. G BER: I'd like to move this into evidence.

THE COURT: Granted. It's in evidence.

Q Mr. Harris, take a step back. Can you explain your understanding of what a compilation is, in accounting terms?

Sure. t a compilation, we're receiving information from the client. We're reviewing that for obvious errors. We are then putting it together in a format and presentation that is the proper, in accordance with the applicable framework, that we're doing that compilation in. We do not conclude or do not verify any of the accuracy on any of the information that is provided.

Q Is that different than a review or audit engagement?

Yes.

Q In what way?

Compilation, we're at lowest attestation, lowest assurance in the attestation agreements. Review would be the next level of an attestation agreement, which would include review, year after year analytics, inquiries with management

and then an audit would be the top attestation engagement type where you're truly going into the underlying support documents.

Q You mentioned the standard governing compilation engagements. Do you know what those standards are? Can you describe them?

SS RS 80. Yes. SS RS 80, that is the main guidance we file when we go through the compilation. It's a statement on standards for accounting and review services and that's what these programs are derived from that.

We followed that as our guide to complete all of the necessary and required steps and procedures.

Q t this time, I'd like for you to turn to page 4, on the screen here. Page four says that "Whitley Penn held a planning call with Jeff McConney and Patrick Birney in early October 2021."

Were you on this call?

Yes.

Q Early October 2021. Can you describe what was discussed at this call?

We described it as our planning call. So, during the planning call, we'd going over introducing our team to the client. We'd also be introduced to the main points of contact that we'd be working with in regards to that engagement.

We'd also go through a timeline of when we were going to do this work for them. We also, during that time, we'll ask for updates, things that are going on with the operations of entities, any changes in systems or internal controls and go through inquiries as well.

(Continued on following page..)

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Q t this time, I would like you to flip to page 11.
It says there that, "The SOFC is prepared under SC 274, personal financial statements. SC 274 requires that all assets and liabilities be reported as estimated current values as of the reporting date."
What is your understanding of this requirement of SC 274?
Yes. Under SC, so, all the assets and liabilities, they say current value. That's the key word, versus book value. Like, a G. . .P. audit is at book value, versus fair market value, or current values, which is what that's referring to.
Q nd does SC 274 cover all personal financial statements under G. . .P.?
I couldn't answer that.
Q Okay.
MR. G BER: So, if we scroll down to page 14.
Q First, it says Patrick at the top of the page. Who is Patrick?
Patrick Birney.
Q Who is Patrick Birney?
I'm not positive of his title, but he was main point of contact that we had when we were completing Statements of Financial Condition, and prepared and provided a majority of the work papers.
Q Okay. So it says, "Patrick explained that he is the

C. Harris - Direct by Mr. Gaber Page 451

primary preparer of the valuations. Patrick obtained all of the necessary information for the valuations from external and internal sources. He worked with other team members to pull this information together, such as Ray Flores. Ray Flores performs the first review of Patrick's spreadsheet and financial statements. Prior to issuance of the SOFC, an individual from upper management of the Trump Organization, and also one of the Trump family members, will read and review the financial statements."
Mr. Harris, do you know who the individual from upper management of the Trump Organization was, referred to here?
Jeff McConney.
Q nd Mr. Harris, do you know who the member of the Trump family who read and reviewed the 2021 financial statement was?
We received the representation letter signed by Donald Trump, Jr., as the trustee.
Q It's your understanding that he reviewed the statement?
We provided the final version to Jeff to provide to him, and we got the representation letter returned to us, signed, by Mr. Trump, Jr.
Q Thank you. We can move on.
Mr. Harris, I'm going to ask you to -- for identification, I'm going to pass you a document that's marked

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Plaintiff's Exhibit 1515.
(Whereupon, a document was displayed, and handed to the witness.)
Q So, this is a sort of series of emails, so we'll start from the bottom.
MR. G BER: Not all the way. Sorry. Page two.
Q So, page two here, this is an email -- or, do you recognize this document?
What I'm holding here is different than that.
(Whereupon, there was a pause in the proceedings.)
This is different. Yeah. What I'm holding here is not the same thing as what I'm seeing on the screen.
(Whereupon, there was a pause in the proceedings.)
(Whereupon, a document was handed to the witness.)
Q Do you recognize this document, Mr. Harris?
Yes.
Q Can you -- is this your email address here, at the top?
Yes, it is.
Q Okay. nd did you send this email?
Yes.
MR. G BER: I would like to move Plaintiff's

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Exhibit 1515 into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 1515 was received in evidence.)
Q So, "Mr. Harris, I have included everything, based on the information I have, but need help on audit committee and RP section below, before getting this over to Felix, to distribute."
First, what is RP, in this context?
Related party.
Q Okay. nd Mr. Harris, looking at this document, what are you asking for here, can you tell me?
This email took place as I was preparing to send out our independence check.
Q Is that a conflict check?
Yes.
Q nd if you go to page three of the document, Mr. Harris, one of the lines, it says, "List the names of the board of directors/trustees, including the chairman of the audit committee."
You were asking for that information, then. Do you have an understanding of who those individuals are, for the Trump Organization?
Yes.
Q Can you tell me?

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Donald Trump, Jr. and Eric Trump.
Q What do you understand Eric Trump's role to have been with respect to the board of directors/trustees, including the chairman of the audit committee?
s the trustee, executive leadership, corporate governance, tone at the top.
Q nd Donald Trump, Jr.?
Same responsibilities.
Q Did either -- did Eric Trump play any roles as a member of, or chairman of, the audit committee for the Trump Organization?
They do not have an audit committee.
Q They do not have -- okay. What interactions did you have with Eric Trump in their role as --
(Whereupon, there was a pause in the proceedings.)
Q Tone at the top?
The person in charge, they set the tone at the top. The leader.
Q nd did you have meetings with Eric Trump, in this capacity?
Is this in relation to the Statement of Financial Condition?
Q Yes.
No.

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Q How about generally?
Who?
Q Mr. Eric Trump. Did you have meetings with Mr. Eric Trump regarding other engagements?
Other engagements, yes.
Q But you had no other meetings that included you discussing the Statement of Financial Condition?
Yes.
Q I had asked you if you had had any meeting with Eric Trump that discussed the Statement of Financial Condition.
No, I did not.
Q Did you have an annual meeting with Mr. Eric Trump related to the Trump Organization engagement?
Correct.
Q Yes?
Yes.
Q The Statements of Financial Condition have been discussed at any of these annual meetings?
No, they were not.
Q You sure about that?
Our first meeting took place subsequent to the issuance of the Statement of Financial Condition.
Q Mr. Harris, do you remember giving a deposition in May of this year?
Yes.

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Q nd I believe that we were at your counsel's office, we sat in the conference room, there was a stenographer there?
I remember, yes. I remember this.
Q Do you remember what I asked you about the audit committee and the annual meetings at the time?
Yeah.
Q Okay. nd if I were to bring up your transcript, would that potentially refresh your recollection as to answers you gave during that meeting, or during that --
I don't recall what I said.
Q Okay. nd would it refresh your recollection if I showed you your testimony from that day?
Yes.
MR. G BER: I would like to refresh his rec, so if we look at page 76.
(Whereupon, a document was displayed.)
Q So, I asked you:
"So, in this capacity that we are describing here, did Don, Jr. or Eric certify that there were any internal audit controls, policies or procedures at the Trump Organization that you are aware of?"
nd you said:
"No."
nd I asked you:
"You have described some of what you understand

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Eric's role to be. You mentioned an annual meeting. You had mentioned that you/he is present at meetings between you and the managers of the hotels."
You said:
"Correct."
I asked:
" ny other interactions with Mr. Eric Trump in regards to his, like, role as either --"
I think the transcript is a little --
"-- in the capacity of an audit committee member, or --"
nd then you said:
"Sure. On the audit side, those are primary discussions."
Let me just see.
(Whereupon, there was a pause in the proceedings.)
Q So then, if we skip ahead to 77, on line 11, I asked you:
"Just the high level, just the high level managerial operational stuff that you described?"
nd then you said:
"Yup. Exactly right. That annual meeting we have goes through all the engagements which, the Statement of Financial Condition would be a part of that discussion."

So, does this refresh your recollection as to whether those annual meetings discussed the Statement of Financial Condition?

MR. ROBERT: Objection, your Honor.

THE COURT: nd what's the ground of the objection?

MR. ROBERT: I think Mr. Gaber has to go up to the question and answer that's before that, to put that in context.

THE COURT: Well, let's do that, unless there's an objection.

Q Okay.

"Question: Did you have any meeting with either Don, Jr. or Eric, with respect to the SOFCs?"

You answered:

"Not specifically. Not specifically in relation to the, yeah, Statement of Financial Condition."

nd then, the question that I just read out.

So, while not specifically, did you have any meetings in which the Statement of Financial Condition would be a part of the discussion?

I did not have any meetings with Donald Trump, Jr. or Eric Trump in regards to the Statement of Financial Condition.

Q So, when you testified that at the annual meeting that you had that goes through all the engagements, which the

Statement of Financial Condition would be a part of that discussion --

I think the question, lines seven and nine, or line nine, would be my answer, that I did not have any meetings in relation.

Q Did you discuss the Statement of Financial Condition at the annual meetings in any way?

No.

Q That seems --

Yes. It's contradictory, nine and fifteen are definitely contradictory, but during those annual meetings that we had in January, that's with Eric Trump and his accounting team and the property managers, and we go through the audit and other compilation engagements during that meeting.

Q Okay. Let's move on.

(Whereupon, a document was displayed, and handed to the witness.)

Q So Mr. Harris, I'm handing you a document marked PX 2300 for identification. Do you recognize this document?

Yes, sir.

Q Can you tell me what it is?

Mazars engagement letter.

Q Engagement letter for what engagement?

Engagement letter for the Statement of Financial Condition.

Q Okay. Mr. Harris, looking at the signature block, can you tell me why this engagement letter is addressed to Mr. Eric Trump?

s the trustee of the revocable trust and most of the properties, assets, liabilities that are included on the Statement of Financial Condition fall under the revocable trust.

Q The signature block identifies Mr. Trump as president of the Trump Organization. Did you understand that to be his role at the time of this letter?

Yes.

Q The letter then goes on to say:

"Mr. Trump -- Dear Mr. Trump, you have requested that we prepare the financial statements of Donald J. Trump, the company, which comprise your Statement of Financial Condition as of June 30, 2021, and the related notes to the financial statements required by accounting principles generally accepted in the United States of merica, G. . .P., and perform a compilation engagement with respect to these financial statements. We are pleased to confirm our acceptance and understanding of this engagement by means of this letter."

So, this is, Whitley Penn will prepare the financial statements and perform a compilation engagement with respect to these statements. Is preparation and performing of the compilation engagement different than compiling the Statement of Financial Condition?

s part of the compilation engagement, what we were doing is taking the information provided by the client, reviewing that for any obvious errors, and then adjusting it for any presentation or format issues to make sure it's in accordance with that applicable guidance.

Q Does preparation include generating valuations of assets or determining the amounts of liabilities in the financial state?

No. We do not verify anything, in a compilation.

Q So under, Our Responsibilities, it says, "The objective of our engagement is to prepare financial statements in accordance with G. . .P., based on information provided by you, and then B, apply accounting and financial reporting expertise to assist you in the presentation of financial statements, without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for them to be in accordance with G. . .P."

Can you describe what you mean, by without undertaking to obtain or provide any assurance?

Correct. s part of a compilation, we could not verify the accuracy of any of the information that is provided, and we do not provide an opinion, or any assurance or conclusion, in regards to the accuracy of the information on that compilation.

Q Okay. nd then a moment ago we discussed the, I believe it's pronounced SS RSs?
Correct.
Q nd you had said you discussed them, but can you tell me what they provide in the context of a compilation engagement, including the ethical principles here?
Yes. Under SS RSs, that is the guidance and the rules that we follow. It provides the guidelines that we must follow, and the procedures that we must do to be in compliance with the compilation guidance.
Q nd then the paragraph below that, it says, "We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us for the engagement, or otherwise gather evidence for the purpose of expressing an opinion or conclusion. ccordingly, we will not express an opinion or conclusion, nor provide any assurance on financial statements."
Why are you not required to verify accuracy or completeness of the information?
That's the definition of a compilation.
Q So --
Under -- not required, under a compilation, to do those procedures.
Q Okay. nd assurance here, again, I think you described it, means what?

We are not providing any opinion or providing any conclusions in regards to the information within the Statement of Financial Condition.
Q In the next paragraph it says, "Our engagement cannot be relied upon to identify or disclose any financial statement, misstatement, including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity, or noncompliance with laws and regulations."
Is this also part of the compilation standards that you have discussed?
Correct.
Q So, this is set by the ICP for any compilation engagement?
Correct.
Q Can I direct to you page two? Under the header, Your Responsibilities, it says, "This engagement is -- the engagement to be performed is conducted on the basis that you acknowledge and understand that our role is, to prepare financial statements in accordance with G. . .P., and assist you in the presentation of the financial statements in accordance with G. . .P. You have the following overall responsibilities that are fundamental to our undertaking the engagement, in accordance with SS RSs."
nd then there's a list here of several items that fit that description. Can I just ask, as a general matter, for all of the responsibilities listed here in the through G -- sorry,

through H, is it important that a client acknowledge and understand their responsibilities, as described here?
Yes.
Q Is it necessary for them to do so in order for Whitley Penn to take and engagement such as this one?
Yes.
Q So, beneath the list of responsibilities, the document also says that the Trump Organization would be responsible for, quote, "Designating an individual with suitable skills, knowledge and experience to oversee our preparation of your financial statements."
To your knowledge, was somebody at the Trump Organization designated for this purpose, in fact?
Jeff McConney.
Q Jeff McConney.
So, it also says, "You are also responsible for all management decisions and responsibilities --" Sorry. That's what I just read.
Okay. Later in the document, it says, "These responsibilities are fundamental to your undertaking the engagement."
I think that you already said that Whitley Penn would require the client to acknowledge all of these things before taking it, but why are they fundamental? Can you explain that?
Under a compilation, we are not doing anything, you

know, to verify the accuracy of that information, so that responsibility and accountability follows within the client to be doing those things so that the information is correct, because we didn't do anything to verify that it is correct.
Q nd then the last sentence on this page, it says, "You are responsible for evaluating the adequacy and results of these services performed, and accepting responsibility for such services."
What does that mean to you, for a client to be responsible for those items?
The client needs to make representations that the information that they are providing is accurate and complete, and in accordance with the framework that we are following.
Q Can we go down to the next page, then?
On page three of this, under, Our report, it says, " s part of our engagement, we'll issue a report on the compiled financial statements that will state that we did not audit or review the financial statements, and that accordingly, we do not express an opinion, a conclusion, or provide assurance on them."
I believe that you describe the assurance issue. Then it says, "Our report will disclose," and for the sake of time, I'll just say that there's a long list here of disclosures that the report will include. re you able to summarize what these disclosures are?
Under the compilation guidance, again, we, the

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management, acknowledged that the framework was going to be under G. . .P., and so we reviewed all of the information that we were providing, reviewed the Statement of Financial Condition and the report to ensure that it's in that proper presentation and format that follows G. . .P., but then you must disclose any departures from G. . .P., and so these are the departures from G. . .P.

Q So, departures from G. . .P. are required disclosure in a compilation report?

Correct.

Q nd so, would each one of the disclosures here be necessary to disclose, before you were to issue your compilation report?

Restate that question?

Q So, if there is a departure from G. . .P. in the financial statement, you would -- would you issue the compilation report, without disclosure of that departure?

No.

Q Okay. t the bottom of this paragraph it says, "If these provisions were to be included in the financial statements," referring to the disclosures that we just discussed, "they might influence the user's conclusions about the entities' financial position, results of operations, and cash flows. ccordingly, the financial statements will not be designed for those who are not informed about such matters.

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There may be circumstances in which the report differs from the expected form and content."

Can you explain to me what it means here, that the provisions -- if the provisions were to be included, they might influence the user's conclusions? What does that mean?

That if all this information was included, that the amounts could be different.

Q nd what does it mean that the statements will not be designed for those who are not informed about such matters?

nybody that uses the statement should understand that the numbers have not been verified, we have not verified the accuracy of them, and we have not concluded or provided any sort of assurance on them, and that these departures could change the amounts that are being presented, on that statement of the financial condition. So, any user needs to be aware of those disclaimers.

Q Is that for the benefit of Whitley Penn, as the compiler?

You just described that it -- that you hadn't performed assurance on it, and so the user would need to be aware of that.

I think part of it, yeah, it's for Whitley Penn. Yes.

Q Okay. So is the warning here, that users might reach a different conclusion about the financial condition of Donald J. Trump, is that wording based only on the G. . .P. exceptions

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here, the disclosure of the G. . .P. exceptions, or is it just broadly, that's construed.

I believe this paragraph, specifically, that we are referring to, is talking about the disclaimers and the differences, those departures and the differences, those could make.

Q So Mr. Harris, having gone through the statements that Whitley Penn has made in the engagement letter, and looking at the Trump's organizations responsibilities in the engagement, broadly speaking, what's the role of this mutual responsibility and obligation in the engagement letter?

The majority of the responsibility falls upon the client to do through G, or H, that was listed on that previous page, whereas part of our compilation procedures -- again, you're gathering information from a client, reviewing it for obvious errors, and putting it into a usable format that's in accordance with the framework.

MR. G BER: Can we go to the bottom of the document?

Q So, at the bottom it says, response, "This letter correctly sets forth our understanding, The Trump Organization, acknowledged and agreed on behalf of the Trump Organization by," and then do you recognize that signature, Mr. Harris?

Yes, I do.

Q Whose signature is that?

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Eric Trump.

Q Did you have an understanding of whether Eric Trump had the authority to retain Whitley Penn for this engagement, based on his position at the Trump Organization?

I would presume the trustee and president would be able to make that decision.

Q Okay. nd would Whitley Penn perform a compilation report without an engagement letter?

No.

(Whereupon, a document was displayed, and handed to the witness.)

Q So Mr. Harris, I'm handing you, for identification, a document that has been marked Plaintiff's Exhibit 1512.

Do you recognize this document Mr. Harris?

Yes. I recognize this document.

Q Can you describe to me what it is?

Yeah. Email from another engagement team member to me. He was trying to put the agenda together that we would provide the client, as we started to begin the planning and the compilation for the Statement of Financial Condition.

(Continued on the next page.)

MR. G BER: First, I'd like to move this document into evidence.
THE COURT: Granted. It's in evidence.
Q Can you tell me who Mr. McKinnell is?
Steven McKinnell was the senior manager on the Statement of Financial Condition.
Q Okay. "I tried to strip this down to keep it a compilation scope." Then he goes to SS RS 80. Then says "if we do anything more than that, we run the risk of performing assurance procedures."
Can you explain what you understood Mr. McKinnell to be concerned about here?
He was pulling this agenda from our normal planning agenda that we use for, primarily, our audit and review engagements; and, so, there's additional items that are already included on that template agenda that were not necessary to be on it for a compilation.
Q I believe that the agenda is attached to this document, it's pages 2 and 3.
Can you identify what the agenda items are that he was concerned about?
It's our standard agenda. The management inquiries are-- a few of them are taken off on that.
Q Sorry?
few of the management inquiries, number seven,

that's the main part of what he was referring to.
Q s beyond the scope of the compilation engagement?
Not beyond the scope. Sorry. Restate your original question.
Q I had just asked you, I believe, and the last answer, you said that Mr. McKinnell was looking at the agenda and trying to make sure the items that were going to be discussed, that would put you in the position of providing too much assurance or getting rid of the audit scope of the compilation. I was trying to understand and identify any of the items here.
Yes, number seven, the management inquiries. It's larger than the audit review agenda. There's more items.
Q Looking at this agenda, as you and Mr. McKinnell, as the engagement team, and two other client teams Jeff McConney, Raymond Flores and Patrick Birney, these were the individuals, the ones at this meeting?
Correct.
Q It seems we don't have paper copies of this. re you comfortable with just reviewing it on the screen, Mr. Harris?
Yes.
Q Do you recognize this document?
Yes.
Q Can you tell us what this is?
Our Statement of Financial Condition, the final

report.
Q The Statement of Financial Condition, the final report. What are the components of this document?
This document would be made up of our compilation report, which is our letter to the trustee that goes at the front of this report and then it's going to include the Statement of Financial Condition as well as the footnotes and disclosures.
MR. G BER: First, I'd like to admit this document in evidence.
THE COURT: Granted. It's in evidence.
Q You just said, Mr. Harris, you'd include our compilation report. Whitley Penn is responsible for the compilation report?
When I say compilation report, I'm referencing just the one page that has our signature on it.
Q In addition to the compilation report, you mentioned the Statement of Financial Condition and the notes.
Who is responsible for the content of the Statements of Financial Condition?
The client's responsible for that.
Q Who's responsible for the notes?
The client is responsible for them.
Q So, at the top of this, this is the report that you were describing, right?

Correct.
Q It says: "The trustee of the Donald J. Trump Revocable Trust dated pril 7, 2014 as amended on behalf of Donald J. Trump, are responsible for the accompanying personal financial statement which comprises the Statement of Financial Condition as of June 30, 221 and related notes to the financial statement in accordance with accounting principals generally accepted in the Untied States of merica."
Then it says: "We had performed a compilation engagement in accordance with the statements on standards for accounting and review services promulgated by the ccounting and Review Services Committee of the ICP . We did not audit or review the financial statement nor were we required to perform any procedure to verify the accuracy or the completeness of information provided by the trustee of Donald J. Trump Revocable Trust dated pril 7, 2014, as amended on behalf of Donald J. Trump. ccordingly, we do not express an opinion, a conclusion, nor provide any form of assurance on this personal financial statement."
Can you explain why this language is included in your report?
It's going back through a lot of that compilation guidance that's stating that the client is ultimately responsible for this, as the accounting firm would be responsible for taking the information that the client

provided, reviewing it for obvious errors, and putting it into the format that would then be used by G P in this circumstance.
Q Who is this addressed to, this report?
The trustee.
Q It says: "The effects of these departures. These departures above," being the G P disclosures that were referenced in the engagement letter. You can correct me if I'm wrong. "From the accounting principles generally accepted in the United States of merica have not been determined."
Can you explain that?
s part of the compilation guidance, the accountants are not responsible to understand what the effects of those departures from G P are that we've included within that disclaimer paragraph.
THE COURT: Five-minute warning.
Q It says: "Because of the significance and pervasiveness of the matters discussed above."
I'll first ask, what are the matters discussed above? What do you understand that to be?
From the previous page, it's discussing who's responsible and that it's in G P, that it would not provide our assurance or conclusion on it. It includes the departure from G P as well.
Q It says: "Makes it difficult to assess their impact

on the person financial statement. Users of this personal financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised Statement of Financial Condition prepared in conformity with the accounting principles generally accepted in the United States of merica."
Who are the users of this personal financial statement?
That, as my understanding, this requirement came from a lender.
Q Do you know which lender?
I believe Deutsche.
Q Does this paragraph only refer to the disclosed exceptions to G P listed on the previous page?
We can go up to that, if you want to see it?
Yeah. I think it's referring exactly to those departures from G P as well as this other paragraph in regards to effects of COVID on the operations of the assets.
Q This here, this is, it's labeled The Notes to Statement of Financial Condition.
Why does it say in parentheses Independent ccountant's Compilation Report?
That's a requirement in the disclosure checklist for compilation to include that wording in there. I think it's

in there so that the user will refer back to that compilation report we just went through that has those certain departures and some of that wording that provided no assurance on this information.
Q Right before we take a break, it says "assets are stated at their estimated current values and liabilities at their estimated current amount using various valuation methods."
Can you explain what that means?
The client prepared calculations for the assets and liabilities-- well, for the assets in regards to -- they prepared calculations to get to the fair market value, the current value, or selling price of these assets.
Q The client prepared them?
Yes.
MR. G BER: Judge, we can take a break now. Okay?
THE COURT: nother ten-minute break. Take 15 minutes.
(Recess taken.)
THE COURT: Let's get the witness.
(Whereupon, the witness enters the courtroom.)
THE COURT: Please proceed.
Q Mr. Harris, you said the client is responsible for calculating the assets and liability in the Statement of

Financial Condition?
Correct.
Q Did Whitley Penn determine any of the values presented in the Statements of Financial Condition?
No, we did not verify the accuracy of the information.
Q Did Whitley Penn determine any valuation methods for the client to use?
No, we did not determine any valuation methods.
Q Mr. Harris, I'm going to hand you an exhibit marked PX 050101, slip-sheet for a document provided to us. Do you recognize the spreadsheet, Mr. Harris?
Yes, sir.
Q Can you tell me what that is?
This worksheet, the Excel worksheet was provided by the client. It included all of the asset amounts that feed, tie back into the Statement of Financial Condition.
Q Is that the final version that was used to tie back to your final compilation report?
If it was pulled from our work papers, it would be the final version.
Q I can represent to you it was pulled from your work papers.
Yes.
MR. G BER: I ask that this be admitted into

evidence.
THE COURT: Granted. It's in evidence.
MR. G BER: I'm not sure that the engagement letter, if I officially said the magic words. In risk of repeating myself, I'd ask that that be moved into evidence as well.
THE COURT: t the risk of repeating myself, granted. It's in evidence.
Q So, what do you use this document for when completing your compilation engagement?
This document provided by the client we review it for obvious errors. So, we scroll through it looking for mathematical errors and going through everything that is on--everything on here to see if there's obvious errors we come across. This would be the source document that ties back to the Statement of Financial Condition.
Q Did you rely on any other backup or support documents in connection with the 2021 SOFC engagement?
There were multiple prepared by the client, work papers that were provided to us by the client and they all stated in our engagement letter so there are other details that are in there that tie back to the Statement of Financial Condition outside of just this one document, but, this includes all of the cash, the escrow, and then all of the property and investment accounts.

Q So, any asset or liability listed in this Statement of Financial Condition would be found in this document?
The liabilities are not within this work paper.
Q Where do the liabilities come from?
We have a separate detail for an accounts payable detail and notes payable detail that are included within our work papers that detail out all of those portions, the liability portion of Statement of Financial Condition.
Q Okay. You said that Whitley Penn would correct any obvious errors in this document; is that correct?
Management or the clients would correct any errors that we noted. ny obvious errors, we would not make the corrections.
Q Did you perform any analysis or analytic procedure on the assets listed here?
No, we do not.
Q I'm going to present you an exhibit now marked Plaintiff's Exhibit 1502 for identification.
Do you recognize this document, Mr. Harris?
Yes, sir.
Q Can you tell me what it is?
This is our representation letter. This letter is prepared by us but we provide it to the client to review and sign and return to us. It is the last work paper that we receive prior to issuing our final compilation report and it

includes representations that management is making, that representations are stating that the information that the client has provided is accurate, complete, and in accordance with applicable framework.
Q The second paragraph here says: "Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information such that in the light of surrounding circumstances there is a substantial likelihood that individually or in the aggregate, they would significantly influence the judgment made by a reasonable user based on the SOFC."
I just want to ask you, what does it mean if the items are considered material, regardless of size?
On the compilation we did prepare materiality calculation but, yeah, if anything can be misconstrued by the user, regardless of that materiality that we use, yeah, it could significantly influence or change your judgment.
Q It says: "We acknowledge our responsibility and have fulfilled our responsibilities for the preparation and fair presentation of the SOFC in accordance with accounting principles generally accepted in the United States of merica except for the following items:" Then there's, I believe, a list, we've grown very familiar with, of G P exceptions but

would Whitley Penn have issued the SOFC if the client did not make this representation about the G P exceptions?
No.
Q Now, in the interest of time, I won't read through all the representations but there's a number of representations in this document that are being made.
Would Whitley Penn issue the compilation report without these representations from management?
We would not issue a report without getting the signed representation letter.
Q In this form?
In?
Q Signed representation. Would Whitley Penn have issued the 2021 SOFC without a signed representation letter in this form?
This form?
Q This letter. Not any letter. letter that lists out everything here?
Correct.
MR. G BER: pparently, I have not moved to admit this into evidence. I'd like to do so.
THE COURT: Granted. It's in evidence.
MR. ROBERT: Can we ask Mr. Sherief to speak a little more into the microphone.
MR. G BER: I'll try that. Can we scroll to the

bottom of this.
MR. ROBERT: Thank you, sir.
Q Do you recognize the signature on this document, Mr. Harris?
Yes.
Q Whose signature is that Mr. Harris?
Mr. Donald J. Trump, Jr..
Q So, Mr. Donald J. Trump, Jr. signed the management representation letter on behalf of the Donald J. Trump Revocable Trust which, I believe you said, holds many of the entities represented in this?
That would be accurate, yes.
Q Mr. Harris, did Whitley Penn perform any work concerning any 2022 or later Statement of Financial Condition of Donald J. Trump?
No, we did not.
Q Were you ever asked to?
No, we were not.
Q Did you ever inquire as to whether it would be sought from the Trump Organization?
We did inquire of it, as part of our normal engagement procedure. Prior to the time period when we would expect to start that engagement, we reached out to Jeff McConney in regards to the 2022 Statement of Financial Condition at which point he said to hold off working on that

and he concluded later on, reached back out stating it was no longer necessary.
Q Is the Trump Organization still a client of Whitley Penn on other engagements?
Yes.
MR. G BER: Nothing further. Thank you, Mr. Harris.
THE COURT: Cross-examination?
MR. ROBERT: t this time, we reserve to be able to call the witness back during our case, pursuant to the order of stipulation that we had.
THE COURT: Counsels, step up.
(Side-bar discussion held off the record.)
THE COURT: So, the defendants are reserving the right to call Mr. Harris back for cross-examination and we're going to go with Bender at this point. Back to Bender, correct?
MR. ROBERT: Correct, your Honor. Thank you, sir.
MR. W LL CE: If they call Mr. Harris on their case in chief, it would be a direct examination and not a cross-examination.
MR. ROBERT: That's fine, your Honor.
THE COURT: ll agreed.
(Whereupon, Mr. Bender resumes the stand.)

D V I D B E N D E R, having been previously duly sworn, resumed the witness stand and continued to testify as follows:
THE COURT: I remind the witness you're still under oath.
THE WITNESS: Thank you, your Honor.
CROSS-EX MIN TION (Cont'd)
BY MR. SU REZ:
Q Mr. Bender, good afternoon. Have you had the opportunity to discuss your testimony with anyone since we last spoke?
I had privileged conversations.
Q Did you have an opportunity to discuss your testimony with anyone since we speak?
ny conversation would be subject to attorney/client privilege.
MR. SU REZ: That's not what I'm asking. I'm asking if he spoke to anyone.
THE COURT: Let's get a blanket yes or no. Did you speak to anybody in this case about your testimony?
THE WITNESS: Yes.
Q Who did you speak with?
That would be privileged.
THE COURT: I don't think-- who you speak with is not privileged.

THE WITNESS: Counsel.
Q You spoke with your counsel?
Yes.
MR. SU REZ: May I inquire which counsel he spoke with?
THE COURT: Yes.
Q Which counsel did you speak with?
I had lunch with counsel from Blank Rome and Wilson Elser.
Q Did either of the counsel tell you how you should testify here today?
No, sir.
Q Okay.
MR. SU REZ: We'll pull up Plaintiff's Exhibit 741.
Q Do you recognize this document, Mr. Bender?
Yes, I do.
Q What is this document?
This is the representation letter for the compilation of the personal financial statement of Donald J. Trump as of June 30, 2016.
Q Did you draft this document?
Did I draft it? I supervised it. I don't know if I drafted it or a member of my team drafted it.
Q What member of your team would have drafted this

document?
I couldn't answer that without seeing the work papers.
Q Just to be clear, which work papers?
In our binders there are all these papers are list and tells you who worked on the --
Q Those binders would tell me which individual person actually drafted this management representative letter?
It wouldn't tell me who drafted it, but might tell me who worked on it.
Q Did you discuss the contents of this management representation letter with anyone at Trump Organization?
I don't recall.
Q Did any member of your team discuss this letter with anyone at the Trump Organization?
Nobody from my team discussed it, other than me, if I would have discussed it.
Q Why is that?
Because nobody else would have -- would have come to me.
Q You were the person that had communications with the Trump Organization on behalf of your firm?
Not on all matters.
Q s it relates to the compilations of the President's Statements of Financial Condition, were you the individual

that had discussions with staff at the Trump Organization?
Members of my team could have had discussions also.
Q In connection with the 2016 Statement of Financial Condition, which members of your team could have had discussions with staff at the Trump Organization?
I would need to see the binders to see who worked on it.
MR. SU REZ: You can turn to the following page, please. The following page.
Q Here at the bottom of this document, are you aware whether this document was actually signed by Mr. Weisselberg or Mr. Trump, Jr.
It appears to be their signatures.
Q Who would you know that?
I recognize their signatures.
Q How is that the case?
I've seen their signatures a number of times over the years.
Q Okay. How was this letter transmitted to Mazars?
I can't be 100 percent sure.
Q How do you think that the letter was transmitted to Mazars?
Either by e-mail or portal.
Q Excuse me?
Either by e-mail or portal.

Q Portal?
Yeah.
Q What is portal?
Put into a portal.
Q Would you review all the documents that were put into a portal by the Trump Organization?
Would I personally do it?
Q Yes.
Not necessarily, no, sir.
Q Who would review it on your behalf?
On this engagement or any engagement?
Q On any engagement with the Trump Organization?
Items, in general, that went into a portal in later years would have been put-- certain interns would have loaded it into another binder.
Q Who would have reviewed that for you?
Who would have reviewed it?
Q Yes. The documents that were uploaded to the portal, who would have reviewed it for you?
I don't know if anybody reviewed it after it went into the binder. What do you mean by review?
Q Do you know what it means to review a document?
Yes.
Q Okay. If documents were uploaded by the Trump Organization to Mazars portal, who would have reviewed the

documents?
gain, the word "review" I'm not going to use but who would have looked at the documents is what other staff member subsequently pulled it up the files to work on that engagement.
Q Okay. re you mindful of the difference between looking at a document and reading it?
Yes.
Q What is the difference between looking at a document and reading it?
Reading it is reading the whole document. Looking at it would have been to look --
Q Looking at it is just to observe the fact that a document exists?
Yes. They would have looked more looked at it if they needed the document, they would have used it, in general.
(Continued on the following page..)

D. Bender - Cross by Mr. Suarez Page 490

Q Who would have read and comprehended the documents that were uploaded by the Trump Organization in the Mazars portal?

Whichever staff member would have been assigned to work on an engagement would have done whatever procedures were required for the engagement they were working on.

Q Okay. nd in connection with the 2016 compilations report for the Statement of Financial Condition, who would have read and reviewed the documents that were uploaded in the Mazars portal by the Trump Organization?

I'm not sure it went into the portal. I'm just saying, it's a possibility.

Q So, the Trump Organization, it's possible, could have been uploading documents into the portal, but you don't know who would have read those documents?

ny person who would have signed off on the document, or on the binder -- any staff member who would have worked on the, prepared the work papers, an individual entity, would sign off on the work papers that they worked on.

Q But you don't know who that was?

On which occasion?

Q In the connection with the 2016 compilation report for the Statement of Financial Condition.

You need to look in the binder and see who signed off on the binder.

D. Bender - Cross by Mr. Suarez Page 491

Q re these physical binders?

Electronic binders.

Q They are electronic binders. Did you access to the electronic binders?

Yes.

Q nd in connection with preparing your compilation report for the Statement of Financial Condition, did you read and understand the documents that were in the electronic binders?

I did not read -- all I did not necessarily read all of the documents.

Q Okay.

MR. SU REZ: If we can please turn to Plaintiff's Exhibit 740, and if we can zoom into the section that says, Our responsibilities.

(Whereupon, a document was displayed, and handed to the witness.)

Excuse me. Which paragraph?

Q We are looking here at, Our responsibilities, and you would agree, Mr. Bender, that this was the engagement letter prepared by Mazars in connection with the 2016 compilation report for the Statement of Financial Condition?

Yes, sir.

Q Okay. Do you see in paragraph two, where it says, "The objective of our engagement is to apply accounting and financial reporting expertise to assist you in the presentation of the financial statement, without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statement in order for it to be in accordance with accounting principles generally accepted in the United States."

Do you see that?

Yes, sir.

Q ll right. What accounting and financial reporting expertise did you apply to assist the Trump Organization in the presentation of the financial statement?

I applied compilation procedures, as deemed necessary to do this engagement.

Q ny others?

I can't tell you what I did for the June 30, 2016 statement without my binder to see if I did anything else that I could find.

Q So, paragraph one of this document says, "The objective of our engagement is to prepare the financial statements in accordance with accounting principles generally accepting in the United States of merica, based on information provided by you."

Do you see that?

Yes, sir.

Q So, "you," is the Trump Organization, in this case?

Yes, sir.

Q They would provide, you, Mazars, through Mr. Bender, information; correct?

They provided us information, that we do compilation procedures.

Q Okay. nd then you, Mazars, undertook the responsibility to apply accounting and financial reporting expertise. In the second paragraph. Do you see, in the second paragraph --

Yes, sir.

Q -- it says, " pply accounting and financial reporting expertise?"

To assist.

Q To assist. So, you undertook, you promised the Trump Organization that you were going to apply Mazars allegedly considerable accounting and financial reporting expertise to assist the Trump Organization.

We were engaged to compile financial statements.

Q But that's not what this says. This doesn't say that, We agree that it is our responsibility to apply compilation procedures, Mr. Bender. This goes a step further. It says that you are going to assist them in the presentation of the financial statements.

Without undertaking or obtaining or providing any assurance that there are no material modifications that should

be made.
Q nd granted, it says that, but what meaning do you ascribe to the concept that there was expertise that you were going to apply to assist your client in preparing those financial statements?
If you would need a further definition, I would have to reach out. We would need to get somebody who is an expert in compilations.
Q So, you are not sure of what additional expertise was applied to the Trump Organization.
I would want to get expert help.
Q nd is that something that we would be able to determine, from your time records? Did you log this in your time entries?
Did I do the --
Q Yes.
Did I --
Q Did you maintain time entries? ll the lawyers in private practice are still traumatized by time entries.
I did time sheets.
Q You do time sheets.
Yes.
Q nd you maintain time sheets in connection with your work on the compilation reports for the Statements of Financial Condition?

Yes, sir.
Q nd would those time sheets adequately describe the accounting and financial reporting expertise that you applied to assist in the presentation of the financial statements?
I don't think -- you would have to check to see if there were descriptions.
Q ll right. nd how were those time sheets kept?
Electronically.
Q re they in the binders?
No, sir.
Q Where are they kept, in the Mazars universe?
You would have to speak to somebody in internal accounting.
Q The last time -- you retired from Mazars in what year, Mr. Bender?
'22.
Q In 2022? nd at that time, if you needed to pull up your accounting records to see your time sheets and your time entries, how would you do that?
I would have the ability to pull up most of those, that information, yes.
Q You would have had the ability?
Yes.
Q ffirmatively had the ability to do?
Yes.

Q nd if you needed to do it, how would you do it?
I would load my time entry program.
MR. W LL CE: Objection, at this point.
I interrupted the witness. I apologize.
MR. SU REZ: We'll move on.
Next page.
Q Do you see this disclaimer language here, Mr. Bender, where it says that your own report will include the following and, then it has a disclaimer?
Yes, sir.
Q nd if I were to pull up the compilation report for 2016, Plaintiff's Exhibit 742 -- excuse me, Plaintiff's Exhibit 756, Plaintiff's Exhibit 756, that would have the same disclaimer?
MR. W LL CE: Objection. I'm not sure the record it clear what Plaintiff's Exhibit 756 is.
THE WITNESS: That's what I want to make sure.
(Whereupon, a document was displayed, and handed to the witness.)
Yes, sir.
Q We are going to blow up 756, and it will show the disclaimer, and that disclaimer appears there, on the second paragraph of 756.
No. That's the last paragraph.
Q Last paragraph?

Not the second paragraph.
Q Significance and pervasiveness of the matters discussed above?
Yes, sir.
Q nd the engagement letter was a prerequisite to you getting the engagement to prepare the compilation report; correct?
We might have started the procedures before we received the physical engagement letter.
Q So, you did not need an engagement letter to start the procedure; is that your testimony?
We might have started it without the -- without the --
Q My question is a little different. Did you need the engagement letter to start the procedures?
I did not need the engagement letter to start the procedures.
Q Do the accounting, the accounting, the CP accounting guidelines require you to have an engagement letter before you perform a compilation report?
I would have to check. I'm not sure, off the top of my head.
THE COURT: Ten-minute warning.
MR. SU REZ: Thank you, sir.
Q If the engagement letter, in theory, predates the compilation report, and in fact predates the compilation report,

how would you know which disclosures were appropriate to include in your accountant's compilation report, if you had not even begun the engagement, Mr. Bender?

Well, can you clarify what you mean by disclosure?

Q Sure. How would you know that this clause was required in your compilation report, ahead of time?

If the Trump Organization would have informed us that they wanted to change the level of work we had done before. They had not informed us of such a change.

Q But this clause isn't standard operating procedure in a compilation report; correct?

No, sir.

Q You would have to become familiar with the accounting and financial reporting of the organization in order to determine which clause you needed to include as a disclaimer; correct?

Yes, sir.

Q nd you would do that, in theory, prior to preparing a compilation report?

Yes, sir.

Q Okay. nd the next page, as to cash and marketable securities and hedge funds, escrow reserve, deposits and, pre-paid taxes --

MR. W LL CE: Objection. It says expenses, not taxes.

MR. SU REZ: I'm sorry. Thank you. It's late.

Q s to cash, marketable securities and hedge funds, escrow reserve, deposits, and prepaid expenses, those are two separate lines in this Statement of Financial Condition; correct?

Yes, sir.

Q ll right. So, as to cash, marketable securities and hedge funds, which are listed as $114,400,000, would you agree that you had the ability to determine that there was no failure to disclose the methods used to determine estimated current value and amount of that asset?

What's the last word? I'm sorry. Just last word. I didn't hear.

Q Of that asset?

Okay. Thank you.

THE COURT: I'm sorry. Just, ask the whole question again.

MR. SU REZ: Sure.

Q In connection with your preparation of the independent account and compilation report, were you able to determine that there was no failure to disclose the method used to determine estimated current values and amounts for that asset?

I believe there were.

Q You believe there were no failures?

No failures.

Q Correct?

MR. SU REZ: I'm going to adopt your Honor's order and direction, to say the same question with respect to each asset. I just want to make sure that I've got the question down right.

Q With respect to the escrow reserve, deposits and prepaid expenses identified as $28,010,000, were you able to determine that there was no failure to disclose the methods used to determine estimated current values and amounts for that asset?

Yes. I believe so.

Q Is that yes?

Yes.

Q Yes. Same question for Trump Tower?

Just reword the question one more time? Or reread the question?

THE COURT: Do you want to repeat?

MR. SU REZ: Please.

THE COURT: Okay.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

Yes, I was.

Q Same question for Trump Tower?

Yes, sir.

Q Same answer?

Yes, sir.

Q Same question for NikeTown on East 57th Street? Same question, same answer?

Yes, sir.

THE COURT: You don't have to say, Same question, same answer. You can just list each property.

Q nd that applies, as well, to 40 Wall Street?

Yes, sir.

Q nd that applies, as well, to the Trump Park venue?

Yes, sir.

Q nd applies as well to the club facilities and related real estate in New York, Florida, New Jersey, California, Washington D.C., North Carolina, Scotland and Ireland?

Yes, sir.

Q nd those are identified at 2,107,800,000?

Our compilation procedures, we were able to satisfy, as part of our compilation procedures.

Q nd the same question for the Trump World Tower at United Nations Plaza, Mr. Bender?

Yes. We were able to satisfy, as part of our compilation procedures.

Q nd the same question for 100 Central Park South?

Yes. We were able to satisfy, as part of our compilation procedures.

Q nd the same question for Trump Plaza, commercial and

residential portions, in New York, New York?
Yes. We were able to satisfy, as part of our compilation procedures at that time.
Q You say, at the time. Is there anything that's changed now?
I don't recall. I can't tell you what's going on today.
Q With respect to the Statement of Financial Condition in 2016?
t the time we prepared, there was no issue.
Q Okay. With respect to the Trump Palace, Trump Parc, and Trump Parc East condominiums, the commercial portions, same question Mr. Bender.
There were no issues at that time. We had no trouble satisfying ourselves.
Q The same question for the Trump International Hotel and Tower in New York, New York, Mr. Bender?
t that time, we had no problem satisfying ourselves.
Q nd the same question for the Trump Old Post Office in Washington D.C.?
t that time, we had no problem satisfying ourselves.
Q nd would you give me the same answer if I asked about 1290 venue of the mericas, and 555 California Street?
Yes, sir.
Q nd the same question for the Trump International

Hotel and Tower in Las Vegas?
Yes, sir.
Q Same question for real estate licensing developments?
Yes, sir.
Q nd when you say, Yes, sir, Mr. Bender I'm understanding that to mean that if I asked you the same question, you would give me the same answer?
Yes, sir.
Q nd the same for, other assets?
Yes, sir.
Q nd that mathematically footed to the 6,300,000,000 --
MR. SU REZ: Please move that up.
Q nd that footed to the $6,388,510,000 in total assets?
I believe so.
Q nd that's the math that you would have carried over from the supporting data which was provided to you?
The math would have been done separately, on the sheet.
Q It would have been a separate document?
This would have been added up separately.
Q The math to get here, the numbers that are reflected in this statement of assets.
I can't tell you if it was done on Excel or in Word, without seeing the line documents, but the math would have been done -- this document is separate. Would be done separately.

Q This document would have been done separately?
Yes.
Q nd where would the values on this document have been divined were?
They would have come from Jeff Supporting Data.
THE COURT: Okay. re we through with this?
MR. SU REZ: Yes.
THE COURT: Okay. We are going to break in a minute. My Principal Law Clerk, llison G., has questions for the attorneys about scheduling; okay?
MS. GREENFIELD: So we are starting off tomorrow morning, continuing with the cross of Mr. Bender? Is that correct?
MR. SU REZ: That's correct.
MS. GREENFIELD: How long do you anticipate you have, remaining?
MR. SU REZ: Depending on the answers, I will hope to be able to conclude.
MS. GREENFIELD: By the morning?
MR. SU REZ: Tomorrow.
THE COURT: In the afternoon?
MR. SU REZ: I think we got into pretty good rhythm. If we can keep that going --
MR. W LL CE: We are prepared to stipulate that each year Mazars issued Statements of Financial Condition.

I'm not sure that we need to go through every line, to get repetitive answers. We are prepared to enter into stipulations to shorten this.
MR. KISE: I think we are back to the future. We had this discussion, earlier. We'll make every effort, overnight, to streamline it, so that we can be done as rapidly as possible.
MS. GREENFIELD: Okay. Do you want to plan to have another witness, just in case?
So, who is next?
MR. W LL CE: Jeffrey McConney is the next witness.
MS. GREENFIELD: I imagine we are not going any further than that tomorrow; correct?
MR. KISE: That's probably right.
MS. GREENFIELD: Okay. Thank you.
THE COURT: Counselors, come up, one minute.
(Whereupon, an off-the-record discussion took place at the bench.)
* * * * *
(Whereupon, the proceedings were adjourned to Thursday, October 5, 2023 at 10:00 a.m.)

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In The Matter Of:

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

October 6, 2023

Original File People v Trump 10-6-2023.txt

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - P RT 37

PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK, — Index No. 452564/22

Plaintiff,

-against-

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY McCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC; ND SEVEN SPRINGS, LLC;

Defendants.

BENCH TRI L — 60 Centre Street, New York, New York, October 6, 2023

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OFFICI L COURT REPORTERS

THE COURT: court officer, very well-intentioned, nice guy. They all are. One or two times that my cell phone went off, he didn't realize that. So, he tells the audience, you should turn off those cell phones. It was my fault.

Okay. We're back to Mr. McConney, right?

MR. MER: Yes.

THE COURT: Let's get the witness.

J E F F M C C O N N E Y, having been previously duly sworn, resumed the witness stand and continued to testify as follows:

THE COURT: Let's continue.

DIRECT EX MIN TION (cont'd)

MR. MER:

Q Good morning, Mr. McConney. I want to clean up one issue from yesterday and then we'll move forward.

You recall we were discussing Vornado cash and the various accounts that are listed in the spreadsheet we looked at yesterday?

Yes.

MR. MER: Let's go ahead and put that spreadsheet up. It's 2587 Native.

Q Just to recall your testimony--

MR. MER: nd can we collapse the columns that we collapsed before? I think it was D through N.

Q I believe it was your testimony, Mr. McConney, that it was your intent to represent that the Vornado cash accounts, those accounts that referenced 30 percent were held in Capital One accounts but they were different accounts than the Capital One accounts for the various Trump-controlled cash; is that correct?

Yes.

Q m I correct that from time to time, the Trump Organization received distribution of Vornado cash at the discretion of the general partner for the Vornado Partnerships; is that right?

That's correct.

MR. MER: If we could look at Exhibit 3106. Your Honor, this is a bank record that was produced to us by Vornado Realty Trust in response to a investigative subpoena. I ask it be admitted in as a business record.

MR. SU REZ: We object on the basis of Statute of Limitations. It is dated March 15, 2013.

THE COURT: Overruled. Request granted. It's in evidence.

Q You can confirm that the debit account name Hudson Waterfront ssociates IIII is one of the Vornado cash partnerships, correct?

Correct.

Q It's in the spreadsheet we were looking at before, correct?
Correct.
Q nd this shows that the money being distributed by this Vornado cash account is actually coming from Bank of merica, not Capital One, correct?
That's correct.
Q Does this refresh your recollection that the Vornado cash accounts were actually held at Bank of merica and not Capital One?
This -- yes, this transfer came from Bank of merica.
Q That wasn't my question. My question was whether it refreshes your recollection that all of the Vornado cash accounts were actually sitting in Bank of merica, not Capital One?
I don't know where all-- where Vornado puts all of their money. Without looking at our specific backup for that statement, I can't say all their accounts were at Bank of merica. This transfer did come from Bank of merica.
Q Just pick up the exhibit again. Page two is a different transfer from a different Vornado cash account. That's Hudson Waterfront ssociates V, right?
Yes, sir.
Q That is from Bank of merica, correct?

Yes, sir.
Q The third page, Hudson Waterfront ssociates III is another Vornado account, also from Bank of merica, correct?
That's correct.
Q Okay. I'd like to-- we were talking about 40 Wall Street when we broke yesterday.
Do you recall that?
Yes, sir.
Q I'd like to focus on the 2015 valuation and I'd like to put up Exhibit 868 which is admitted into evidence.
nd we looked at this yesterday. This is an e-mail that includes excerpts from the 2015 Cushman appraisal that you forwarded on to Mr. Bender, correct?
Correct.
Q Just to note the date, it's December 29, 2015, correct?
Yes.
MR. MER: If we could pull up Exhibit 3004.
Q This is a cover e-mail and then there were blank sheets after that because it denotes native files, one of which we'll put up.
That's an e-mail from you to Donald Bender, same date as the prior e-mail we just looked at, December 29, 2015, correct?
Yes.

MR. MER: Your Honor, I would move this exhibit with the native files into evidence.
THE COURT: Granted it's in evidence.
MR. FIELDS: Objection. Statute of Limitations if the documents are from 2015.
THE COURT: Objection overruled. It's in evidence.
Q Do you see on the attachment line of this e-mail that the first attachment is named 1-Jeff Supporting Data and it's an XL file.
Do you see that?
Yes.
Q So, this was your process for providing Mr. Bender with copies of your Jeff Supporting Data spreadsheet, correct?
Yes.
Q If we pull up native one, we'll see this is, in fact, your supporting data spreadsheet which appears to be a preliminary valuation spreadsheet that you're sending to him, correct?
I don't remember where we were in the process at this point in time.
MS. H BB : Your Honor, I'm going to do it one time for you today and only one time. I'll object to any backup data that is before the February 2016 date that we believe, per my objection that's been standing for the

past four days.
THE COURT: Okay. Objection duly noted. We'll call it a standing objection to anything before the magic day.
MS. H BB : Thank you.
THE COURT: Overruled.
Q Let's go ahead and go to row 117, and this is the row that starts the analysis of 40 Wall Street in this valuation that you provide to Mr. Bender in December, correct?
Yes.
Q Now, on line 125 and 126, you state: Cushman & Wakefield appraisal done June 2015 for lien refinancing with Ladder Capital, and you put a value of $540 million.
So, at this point in time, you were using the Cushman 2015 appraisal as part of the valuation, correct?
Yes.
Q nd rows 118 through 123, if I'm reading this correctly, is a calculation of an additional value of slightly over $120 million that you then add to the Cushman appraisal value of 540 to get to a valuation of 660.3, correct?
Yes.
Q This additional value is made up of additional income from two spaces that you indicate are new lease signings after Ladder Capital refinancing was completed; is that right?
Yes.

Q So, if I'm understanding this correctly, you are adding additional value based on additional net operating income from leases that you note were signed after the Ladder Capital refinancing, which, I take it to mean, you believe were not included within the Cushman appraisal; is that right?
Yes.
Q Because they weren't, in your understanding, part of the Cushman appraisal. It's appropriate in your view to add that net operating income in as value by then dividing that income by the 3.04 cap rate, that we've talked about before, that you got from the generic market records, correct?
Correct.
Q So, just to close the loop on the calculation. You've got 2.25 million of income from a Dean & DeLuca lease.
You add that up, you divide it by 3.04, and you get the 120 million and change in additional value; is that right?
Yes.
MS. H BB : Your Honor, I'm going to object and ask that counsel ask direct questions instead of testifying. This isn't cross. Just please ask and let him testify to what he did.
THE COURT: I believe your objection is that the questions are leading. Does that sound right?
MS. H BB : Correct, your Honor. It's not only

leading, it's as if he's testifying himself.
MR. SU REZ: nd they're also compound, Judge.
THE COURT: Sorry?
MR. SU REZ: Compound.
MR. MER: Your Honor, this is a defendant. He is a hostile witness. I should be able to lead.
MS. H BB : He's not a hostile witness.
THE COURT: He's a defendant.
MS. H BB : He is. He's a defendant, but he-- yes, but -- your Honor, my objection-- I noted my objection. I'm sure you'll overrule it, but, I would prefer if counsel would just ask him a direct question and let him testify to what he did on the backup, just as he preferred that Chris not testify in any objections yesterday.
THE COURT: He is a defendant. I'm considering him a hostile witness. Objection on the ground of leading is overruled.
s for the compound question objection, yeah, there's a rule you shouldn't be asking compound questions. So, try to keep it discrete points.
Should we have that read?
MR. MER: I think there is an answer, though.
THE COURT: I think there was, also. He answered.

Q We also had looked yesterday at the complete Cushman appraisal. You had sent excerpts to Mr. Bender but you had the full appraisal, correct?
Yes.
MR. MER: Why don't we put up Exhibit 118. It's in evidence. Let's go to page 137.
Q You'll see there's a chart. It says: "Retail contract rent summary." Yes?
Sorry?
Q Sure. It's page 137.
Okay. Got it.
Q This chart appears on that page, correct?
Yes.
Q You'll see under Wall Street frontage, it says: "Dean & DeLuca 18,500 square feet contract rent 1.4 million. Contract rents per square foot 75.68. You see that?
Yes.
Q So, in fact, this Cushman appraisal does include the income from the Dean & DeLuca lease, right?
I can't make that statement. I didn't track this schedule back to the appraisal. So, I can't say yes or no.
Q Did you see this chart and make note of it when you reviewed the appraisal?
No.
Q Let's go to page 115. I'll wait for you to get

there.
I'm there.
Q Second chart says: "Retail tenants." See on line 17 it says: "Dean & DeLuca." See that?
Yes.
Q Doesn't that indicate that this appraisal includes the operating income from the Dean & DeLuca lease?
gain, I didn't go through this appraisal and try everything out. So, I can't answer the question.
Q Well, you did a valuation on the assumption, as we just agreed, that the Cushman appraisal didn't include the Dean & DeLuca lease, right?
That's correct.
Q This page shows that there's a reference to the Dean & DeLuca lease, right?
There is a reference to the Dean & DeLuca lease, yes.
Q Did you make note of this chart when you were reviewing the 2015 appraisal?
No.
Q Let's go to page 117. Let's do -- so, the bottom paragraph carrying over to the next page: "In addition to office space, the subject property is leased to four retail tenants that include Dean & DeLuca."
You see that?

Yes.
Q It goes on to say that "Dean & DeLuca leases 15,500 square feet on the grade." You see that?
Yes.
Q So, this appraisal includes the income on the Dean & DeLuca lease, doesn't it?
gain, I didn't go through and track all of this. I can't make the statement yes or no.
Q Okay, but, you did a valuation in 2015 that was based on the assumption that the Cushman appraisal did not include the Dean & DeLuca lease?
MR. FIELDS: Objection. sked and answered.
THE COURT: Was it asked and answered?
MR. MER: I'll withdraw the question.
Q You missed this reference in the Cushman appraisal; is that what you're saying?
I'm saying -- yes.
Q Let's go to page 136. See the paragraph that says: "Market rental rate retail space? This-- "The subject property is leased to four retail tenants that include Dean & DeLuca." See that?
Yes.
Q Did you miss that, as well?
Yes.
Q Can we agree, Mr. McConney, that by adding the income

from the lease from Dean & DeLuca into your valuation that you double counted the Dean & DeLuca income in your valuation?
MR. SU REZ: Objection, your Honor. Mr. McConney is not a valuation expert. He's not offered as a valuation expert.
THE COURT: Overruled.
Sorry. Can you ask me the question again?
Q Can we agree that by including the Dean & DeLuca lease in your additional value that you added to the 540 from the Cushman appraisal, that you, effectively, double counted the Dean & DeLuca lease income in your valuation?
Okay. I will say again that I didn't track all the information in the appraisal. So, I can't answer that question.
Q Well, I think you can answer the question, Mr. McConney. So, I'm going to ask you to please answer it. The question is: Based on what we just looked at, wouldn't you agree that by including in your additional value the Dean & DeLuca lease that you double counted the income from that lease?
I did not track the information on this appraisal from to B to C. I can't answer that question.
MR. MER: Your Honor, he's not answering the question I'm asking him. It's a simple question.
Q Based on what we've just looked at, you double

counted the Dean & DeLuca lease income. Isn't that the practical effect of what you did in your valuation?
Without looking at all this information and see how it tracks from point to point B within the appraisal, I can't tell you if it's included or not.
MR. MER: Your Honor, again, on math you can check but I will just represent that if you back out the $1,406,000 from the additional value that's then divided by the 3.04 percent cap rate.
MS. H BB : Your Honor --
THE COURT: Let him finish.
MR. MER: It equals 46,250,000.
MS. H BB : Your Honor, objection. Counsel is testifying.
THE COURT: Well, again, as often in this case, there's no jury. So, there's no prejudice. I'll take judicial notice of that, subject to a careful calculation again.
Q Mr. McConney, if you want to confirm this by looking at Exhibit 868, which was your e-mail to Mr. Bender with excerpts from the 2015 Cushman appraisal, none of the four pages that we just looked at that mention the Dean & DeLuca lease from the Cushman appraisal are included in what you sent Mr. Bender, correct?
Can you please give me those page numbers again?

Q Sure. They are page 137.
What page of the appraisal? Sorry. 110?
Q It's not that many pages. You can just flip through it and confirm that the chart is not there?
I understand that, but, I'm saying on the bottom of page 136 -- when I sent it to Mr. Bender, page 136 of 219 was not on the document I sent to Mr. Bender.
Q 137 is Bates number 9451?
That is CW. This is New York G. On the upper right-hand corner, you have page number page 111. That's what I'm looking for.
Q Let's do it more simply. Let's flip through the exhibit.
I am.
Q nd confirm -- okay.
MS. H BB : Counsel, I think he has a point. If you look at the top right, Mr. mer, if you can just give him the number.
MR. MER: I've asked my question. Thanks.
MS. H BB : I'm just trying to help.
Can you ask the question one more time?
Q Can you confirm that none of the four pages that reference the Dean & DeLuca lease in the Cushman appraisal were included in the excerpts you sent to Mr. Bender in Exhibit 868?

Page 701

Yes.

(Continued on following page...)

J. McConney - Direct by Mr. mer Page 702

Q Thank you. That wasn't that hard.

Okay. Let's -- let me ask you, just, we have discussed a couple of mistakes and oversights. We talked about the 30000-square-foot-triplex mistake; correct?

Yes.

Q nd we talked about your mistake in pulling the square footage for a comp at 157, instead of the price per square foot. Do you recall that?

Yes.

MR. SU REZ: Objection, your Honor. He did not testify to having made a mistake.

THE COURT: He just said he did.

MR. SU REZ: No. He just -- it's in his question. It wasn't in his testimony from yesterday. He is mischaracterizing the testimony from yesterday.

MR. MER: I think yesterday he said it was a mistake. He pulled the wrong number from the email.

THE COURT: He just said he did. Or am I hearing things?

Q So, you have that second mistake, and then you have just testified that you missed seeing the Dean & DeLuca reference in the Cushman appraisal; right?

Yes.

Q I may have missed it, but do you recall making any mistakes that caused the valuing to go down instead of up?

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In general, over the 20 years, or --

Q During the period that you were working on the valuations.

Yes.

Q What mistake did you make that caused the valuation to go down?

I recall one on the cash sheet, or the cash spreadsheet we looked at with the Vornado cash on it. One year I included Mr. Trump's foundation cash, Mr. Trump's foundation's cash on that spreadsheet. Donald Bender said I can't do that, it's not controlled by Mr. Trump, it's controlled by the foundation, so I took that off.

I believe on Trump Tower, once, we were valuing vacant space at a dollar amount, and Mr. Bender pointed out that we used a different dollar amount on a certiorari proceeding, and so we reduced the amount of my spreadsheet to the amount that he indicated on the certiorari proceeding? Can I just go back to the first mistake.

Q You said Donald Bender said you can't include cash from Mr. Trump's foundation because it's not controlled by him. Is that your testimony?

I don't remember the exact words, but he had us -- he told me to take the cash from the foundation off that spreadsheet.

Q nd he told you it was because Mr. Trump didn't

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control that cash; right?

He gave me -- I believed it to be, Mr. Trump really didn't control that cash anymore.

Q But you continued to list the Vornado cash; right?

Yes.

Q Why don't we turn to Park venue, Trump Park venue.

MR. MER: nd let's put up the 2012 Jeff Supporting Data, which is Exhibit 793 in evidence.

(Whereupon, a document was displayed, and handed to the witness.)

MR. MER: Let's go to row 166.

Q Now, this shows, Mr. McConney, a value for the unsold units at Trump Park venue; correct?

Yes. Well, except for the super's apartment. The super's apartment was sold.

Q nd for 2011 and 2012, it's the same value. It's a little over $293 million; correct?

Correct. Excuse me. Correct.

MR. MER: Let's pull up Plaintiff's Exhibit 1073. It's an email that has native files attached to it.

MR. SU REZ: Your Honor, I won't raise objections to documents that have already been admitted over our objection. Obviously, you would not be happy with me if I did that. But, we do object to this document that's being

introduced right now, on the basis of statute of limitations.

MR. MER: nd I'll move it into evidence, so that there's something he can object to.

THE COURT: Objection overruled. It's in evidence. The statute of limitations bars claims, not evidence. Of course, they have to be connected, and we'll see whether Mr. mer connected the dots or not, and his team.

(Whereupon, the exhibit was received in evidence.)

Q Mr. McConney, this email from you forwards an attachment that's entitled sponsor unit valuation, September 20, 2012, Park venue; correct?

MR. MER: We'll put up the attachments in a minute.

Oh. There it is. Yes. The attachments. I was looking at the subject. Sorry.

Q Okay. Is that correct?

I'm sorry. Could you ask again?

Q Sure. The top email from you attaches a sponsor unit valuation; correct?

Yes.

Q Okay. nd let's go ahead and pull up the attachment. Do you recognize this as the backup for your valuation of the

unsold apartments?

Yes.

Q nd 502 Park venue, that's Trump Park venue; correct?

Yes.

Q nd there are three columns in this backup. There's Unit, which is the unit number of the apartment; is that right?

Yes.

Q There's an offering plan price; correct?

Yes.

Q nd there's a current market value price column; correct?

Yes.

Q We can agree that the value that you used in your supporting data spreadsheet that we were just looking at is the 293 figure from the offering plan price column; correct?

Correct.

Q nd that was what you used for both 2011 and 2012; correct?

I believe so, yes.

Q nd is this spreadsheet prepared by the TIR sales office in order to give you valuations for the unsold units?

Yes.

Q This is information that you asked TIR to provide you for preparing your valuation of Park venue for the statements;

correct?

Correct.

Q nd if we put this -- so --

MR. MER: Withdrawn.

Q The offering plan price is roughly $57 million higher than the market value total; correct?

Correct.

Q Now, let's go to Plaintiff's 796.

(Whereupon, a document was handed to the witness.)

Q Mr. McConney, do you recognize this as backup that you sent to Donald Bender in support of the supporting data spreadsheet?

Yes.

MR. MER: Your Honor, I move this into evidence, please.

MR. SU REZ: Objection. Statute of limitations.

THE COURT: I thought someone said you are only going to do that once.

MR. SU REZ: No. I said I wouldn't do it for exhibits that have been moved into evidence, but they are bringing up with new witnesses.

THE COURT: ll right. Duly noted. Overruled. It's in evidence.

(Whereupon, the exhibit was received in

evidence.)

Q Mr. McConney, looking at what you sent Mr. Bender. It appears that you sent him a column that shows the unit number and column that shows the offering plan price, but you have cut off the column that shows the market value; right?

Yes.

Q So this was not a mistake. You intentionally removed that third column from the material you forwarded to Mr. Bender, on purpose; right?

Yes.

Q nd you removed that column because you didn't want him to see the values that were labeled, current market values; correct?

No.

THE COURT: That was a yes or no?

THE WITNESS: No.

Q The effect of your removing that column was that he didn't see it; right?

Correct.

MR. MER: I'm going to put up, from Exhibit 3041 -- which is the defendants' 202 response -- paragraph 344, and if we can do it side by side, eventually, with the exhibit that we were just looking at.

So, let's go to paragraph 344, which is page 126, I believe.

(Whereupon, a document was displayed, and handed to the witness.)

Q Paragraph 344, which defendants have admitted is that, "In 2013, the following 11 units were stabilized," and then you see there's a list of units; correct?

Yes.

Q nd we can agree that if a unit was rent stabilized in 2011, it was rent stabilized in 2012 and 20 -- I'm sorry. If it was rent stabilized in 2013, it would have been rent stabilized in 2012 and 2011; correct?

MR. SU REZ: Objection, your Honor. That's a legal conclusion. I don't know that Mr. McConney is a lawyer.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Mr. mer, is there some other way that we can figure out what was rent stabilized and what wasn't?

MR. MER: There's a paragraph above it. Why don't we use that paragraph. Defendants, in response to an assertion of the units that were rent stabilized in 2011 and 2012, asserted that the following 12 units were rent stabilized as of September 2011, and then there's a list of units. So, if we can take judicial notice of that as an admitted fact; your Honor?

THE COURT: Yes. That was admitted by this defendant; right?

MR. MER: Yes, your Honor.

MR. SU REZ: Your Honor, the response to 343, actually, is disputed.

MR. MER: I was reading what comes after, disputed.

MR. SU REZ: Okay.

THE COURT: ll right. So 343 is disputed, but what comes after it is undisputed.

MR. MER: It's what they assert.

THE COURT: Well -- oh, sorry. That's how those things work. That's an assertion by this defendant.

MR. MER: Yes.

MS. H BB : I'm sorry. Just to be clear for the record, are we putting in the entire document, or just this section? I would submit the same response, that we should be putting in the entire document, if that is what --

MR. MER: I thought I moved the whole document into evidence.

MS. H BB : It has been moved in? Then I have no objection.

THE COURT: Well --

MS. H BB : The entire document.

THE COURT: -- is it in evidence, the entire

document?

MR. MER: I moved it into evidence. I believe your Honor said yes.

THE COURT: Yes. It's in.

MS. H BB : Okay. Good.

THE COURT: So, it's already in evidence.

Q Mr. McConney, you were aware that Park venue had these rent-stabilized units when you prepared the valuations; correct?

Yes.

Q Okay. nd if we just tick off, in the sponsor unit spreadsheet for 2012, these 12 units. For 4 , 4 , 6B, 7 , 7B, 7D, 7E, 7G, 8E, 8H, 10E, 12E, 15 B, so all of these units you knew, at the time that you were doing the valuations for this year, were rent stabilized; correct?

Correct.

Q nd you valued them without any regard to their rent-stabilized status; is that correct?

I didn't value them. TIR valued them. But, I believe that's correct.

Q You put them into your spreadsheet that is goes to Donald Bender; is that correct?

That's correct.

Q nd the values you relied on when you put them in your spreadsheet and sent them to Donald Bender were the offering

plan price values, knowing that these were rent-stabilized units; correct?

Correct.

Q nd you followed that same approach for every statement you reviewed; correct?

Correct.

Q nd it was intentional; correct?

Yes.

Q nd it was something you discussed with Mr. Weisselberg; correct?

I believe so, yes.

Q nd he agreed that that was the way that you were going to do it; correct?

Yes.

Q Let's turn to Seven Springs.

MR. MER: I'm going to put up the 2012 Jeff Supporting Data, 793, which is in evidence.

Q Row 669, that starts the section on Seven Springs; correct? Well, we'll get there in a second.

That's where it starts; correct?

669. Line 669, yes.

Q Okay. nd did you understand at the time that the property was in three different localities, New Castle, North Castle and Bedford?

Yes.

Q Row 683 indicates that there were seven mansions approved to be developed in the Bedford portion; right?
Yes.
Q Those are valued in the spreadsheet at 23 million per mansion, times seven, for value of 161 million in each year; correct?
In 2011 and 2012, yes.
Q nd row 674 mentions a September 16, 2011 telephone call with someone named Hal Goldman; correct?
Correct.
Q That was a call you had with Mr. Goldman; right?
Yes.
Q He was an independent contractor that the company had hired to get through the planning and approval process for the development; correct?
Yes.
Q nd row 679 referenced a call that you had with Eric Trump on September 24, 2012; correct?
Correct.
Q nd the information about the seven mansions being approved in Bedford was information that was provided to you by Hal Goldman in 2011; right?
Correct.
Q nd it was confirmed to you by Eric Trump in 2012; correct?

Correct.
Q nd that was conveyed to you in both of those calls; correct?
I'm sorry. sk you ask that question again?
Q Sure. The information from Mr. Goldman was conveyed to you in that phone call that is reflected here with him; correct?
Correct.
Q nd the information from Eric Trump was conveyed to you during the phone call with him that's reflected here; correct?
That's correct.
Q nd you were trying to value Seven Springs for the 2012 statement, and you knew Eric Trump was involved with the property, so you asked him if he could give you -- if he could give you a valuation for the statement, or provide some insight into the value; is that correct?
Yes.
Q nd Eric Trump confirmed, during the call in September of 2012, that all necessary approvals had been obtained to build the seven homes in Bedford; correct?
Never asked him that question. So, I guess the answer is no.
Q Okay. Had you heard from Hal Goldman during the call at 2011 that all necessary approvals had been obtained to build

the seven homes in Bedford?
No.
Q Were you operating under the assumption, in doing this valuation, that the approval for the seven homes had been obtained?
Sorry. Can you ask that again?
Q Were you operating under the assumption when doing this valuation in these two years that approvals had been obtained, all necessarily approvals had been obtained for these seven homes in Bedford?
Looking at this now, yes.
Q nd did you get that information from Mr. Goldman?
I would have to go back and say -- and correct myself. He, yes Hal probably gave me that information.
Q nd that was confirmed again by Mr. Trump, Eric Trump, in the call the later in the next year?
I don't remember if I asked Eric that or not.
Q It's fair to say that you didn't learn anything between the 2011 valuation and the 2012 valuation that lead you to conclude differently concerning the approval necessary for those seven homes; right?
That's correct.
Q Now, as the controller of a large company, Mr. McConney, with a finance background, you do understand the concept of time value of money; correct?

I do not have a finance background. I have an accounting background.
Q s the controller of a large company with an accounting background, you do understand the concept of time value of money; right?
Yes.
Q The concept is essentially that a dollar paid today is worth more than a dollar paid, say, five years from now, based on inflation; right?
Yes. Excuse me. Yes.
Q nd if you wanted to know how much the dollar that gets paid five years from now would be worth today, you apply a discount factor to determine the present value; correct?
I'm not a finance guy, so I can't really answer that question.
Q So that concept is not something you understand?
I understand the concept. I don't know the computation, to get to that point.
Q I'm asking you a much simpler question. s a general matter, if you want to know how much a future payment is going to be worth today, you do something called, apply a discount factor, to get to the present value. Is that something you have an understanding of?
Not really. I know you have to discount it. I just don't know the exact computation, or where you get the

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percentages from.
Q Okay. My question wasn't going beyond just the simple concept of having to discount it. So, we agree you have to discount it in order to get to present value; correct?
Yes.
Q nd the concept of discounting future income to present value, that is a very standard accounting practice; isn't it?
It could be a standard finance practice. I never use it, really.
Q Different question. My question was whether you would agree that it's a standard accounting practice. Yes or no.
No.
Q It's not. Okay. m I correct that the value of $161 million for the seven homes in Bedford does not apply any discount factor to take in account how long it would take to construct the infrastructure, build the homes, and then sell the home for $35 million each?
That's correct.
Q You didn't factor into the valuation whether the homes were going to be built today, tomorrow, or in a number of years; correct?
Correct.
Q nd if it took five years to complete the homes, and they were sold two years after that, your valuation doesn't

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account for that at all; correct?
Correct.
Q Can we agree that this $161 million attributable to these seven homes is, by necessity, going to be future income, because the homes don't exist as of the date of these valuations?
Correct.
Q You have treated, for purposes of this valuation, the profit of $23 million per home for all seven homes as if it were realized immediately, as of June 30 in each year; correct?
Yes.
MR. MER: Let's go to the 2014 Jeff Supporting Data, which is Plaintiff's Exhibit 719.
(Whereupon, a document was displayed, and handed to the witness.)
Q nd row 655, again, the section on Seven Springs -- as soon as we get there.
MR. MER: I think we have to shift it over to the left. Great.
(Continued on the next page.)

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Q Mr. McConney, for the valuation in 2014 and 2013, it's the same calculation, correct?
I'm sorry. Can you ask that again? I think I heard the question, but, just ask it again, please.
Q For the valuation of the seven mansions at Seven Springs for 2013 and, 2014, it is precisely the same calculation that we saw in 2011 and 2012, right?
Yes.
Q So, all your answers that apply to 2011 and 2012 apply equally to these valuations here, correct?
Yes.
Q Row 662 states a June 30, 2013 -- states that for June 30, 2013, it's per telephone conversation with Eric Trump on ugust 20, 2013, correct?
Yes.
Q This reflects that you had a phone call with Eric Trump on that date ugust of 2013 where he confirmed you should continue to value the seven mansions in Bedford for the Statement of Financial Condition, the same as you did for the year before, right?
Yes.
Q In row 660, it references a different call with Mr. Trump, Eric Trump, on September 12, 2014, correct?
Correct.
Q That note reflects you had a phone call with Eric

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Trump on that date, September 2014, where he confirmed you should continue to value the seven mansions in Bedford for the Statement of Financial Condition, the same as you did for 2013, right?
Yes.
Q s with the prior years, we just discussed your valuation of the seven homes did not factor in whether the homes were built today, tomorrow, or in a number of years in the future, correct?
Correct.
MR. MER: Let's go to Jeff Supporting Data for 2015 and let's go to row 699.
Q Now, Mr. McConney for 2014, it has the same valuation calculation for the seven mansions that we spoke about before, correct?
Correct.
Q nd there is a reference for the June 30, 2014 value, per telephone conversation with Eric Trump, September 12, 2014, correct?
Correct.
Q nd that note reflects that you had a phone call. That's the same phone call we just spoke about, correct?
Yes.
Q Okay. I noticed that there's no value for 2015 and that's per the note that says: "Conservation easement

property moved to other assets." You see that?
Yes.
Q So, if we want to find the valuation for Seven Springs for 2015, we have to go to the section of the spreadsheet that addresses other assets, correct?
Correct.
Q Let's go to row 895. Row 895, we can see Seven Springs per easement and the value now drops down to 56 million, correct?
Yes.
Q That's pursuant to the easement donation?
Yes.
Q Let me ask you a few questions to get a basic understanding of a conservation easement donation. You understood, at the time, that a conservation easement donation is where the owner of the property agrees to donate rights to develop the land, and the value of those rights is then taken as a tax deduction; is that right?
I've got a peripheral knowledge of easement. So, yes, I know the land is donated; and, yes, I know there's a charitable contribution taken on the tax returns.
Q When you say the "land is donated," isn't it that the development rights on the land are donated?
I have a limited knowledge of it, so I don't know exactly what's donated.

THE COURT: I'll take judicial notice, the land is not donated, just certain rights.
Q In order to get the tax deduction for a conservation easement donation, you need an appraisal that values the property before and after the donation.
Is that consistent with your understanding?
I don't know that.
Q re you aware that Seven Springs obtained an appraisal for the purpose of making the easement donation?
Yes.
Q That's the appraisal value, the before value of the property. That is before the donation at the $56 million figure that you put in your valuation, correct?
Correct.
Q You used the before value as opposed to the after donation value because as of the valuation date, the donation had not yet been made, correct?
I believe that's correct, yes.
Q So, the $56 million is actually the value put on the property by the appraiser before the donation of development rights, correct?
Before the donation, yes. I don't know what they donated.
Q So, before donating anything, the appraiser valued it as 56 million, whereas, you have been valuing it, before any

donation, at 161 million, correct?
Correct.
Q You understood it was correct to use the before value rather than the after value because, as of this valuation date, the development rights had not yet been donated, correct?
I believe that's correct.
MR. MER: If we can just put up the Seven Springs demonstrative PDX-3.9, just to look at the values.
Q So, we have the statement values and, by the way, the 161 million, just to clarify, that was just the value of the seven homes in Bedford, correct?
Seven homes. I don't remember in which of the three areas they're located.
Q The statement values here are much higher than 161 from 2011 through 2014 because they include other parts of the property, correct?
Correct.
Q Then the value drops to 56 million in 2015 because you now have the appraisal in your hand that gives you that as the before appraised value, correct?
Correct.
Q So, you deemed it appropriate to use an appraised value, correct?

Yes.
Q nd just so we're clear, the additional value in the prior years come from the mansions on the property, right?
Yes.
Q nd the next year, 2016, that is now after the conservation easement donation, correct?
Correct.
Q So, you then use 35.4 million because that's the after appraised value, correct?
fter the donation, yes.
Q So, the value of the development rights, according to the appraiser, is the difference between 56 million and 35.4 million, correct?
I don't know. Development rights, I don't remember exactly what the difference is. I can tell you the difference is $21 million before and after the donation.
Q Okay. So, the value of the donation is the $21 million, correct?
Correct.
Q What's being donated are the development rights, correct?
I'll take your word for that.
Q Okay. It's not 161 million, is it?
What isn't 161 million?
Q The value of the development rights. The appraiser

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did not value the development rights at any amount more than $21 million; isn't that right?
That's correct.
MR. MER: I'm ready to move on to the golf clubs. I don't know where we are in terms of when we want to take a break. I'll keep going. I'm just going to a new subject.
THE COURT: We can go until 11:30.
MR. MER: Okay.
Q Let's talk about the golf club valuations. Why don't we go ahead and look at the 2011 Jeff Supporting Data spreadsheet which is Exhibit 788; and, let's go to line 264.
This is the valuation for Briarcliff Manor, correct?
It's-- that's the line that's highlighted, yes.
Q This is where that begins, correct?
That's correct.
Q One component of the Briarcliff value, based on your valuation, is comprised of nonrefundable membership fees; is that right?
That's correct.
Q nd column G includes your numbers to value Briarcliff for 2011, right?
Yes.
Q The first set of numbers, which are in rows 280 to

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284, that reflects the value of nonrefundable memberships for 2011, right?
Can you ask that question again?
Q Sure. Rows 280 to 284 have the value that you calculated for the nonrefundable memberships for 2011, right?
Correct.
Q Line 266 states that there were 67 memberships available as of June 30, 2011; is that right?
That is correct.
Q You get this information from the golf clubs. They send you back this information, right?
Yes.
Q Line 268, your note states: "Current membership asking price 150,000. Getting 150,000." Correct?
Yes.
Q That's also information you're getting from people who work at the golf course, correct?
I believe that's correct, yes.
Q But when you value the memberships available for sale, as I read this, you only value 20 of the 67 memberships at 150,000. Right?
That's correct.
Q nd you value another 47 memberships at prices ranging from $175,000 all the way up to $250,000, correct?
Correct.

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Q Was the use of the higher price for memberships from 175,000 to 250,000 just your speculation as to what amount a membership might get in the future?
There was a-- based on a conversation I had with llen Weisselberg, who was more familiar with the golf courses, and these were his estimates.
Q It wasn't based on anything you heard from the people who worked at the golf course, right?
I believe that's correct, yes.
Q The nonrefundable membership fees are amounts you're expecting someone to pay in the future, right?
Yes.
Q Line 275 shows that for 2010, the prior year, there were 69 memberships, correct?
Memberships available for sale, yes.
Q So, between 2010 and 2011, there were only two memberships that were sold, correct?
Correct.
Q nd would you agree with me that at that pace, it would take about 30 years to sell all these memberships?
Using that pace, yes.
Q Now, when you listed the number of memberships to be sold at each price point, you did not do any estimate as to how far out it would take into the future to actually sell all those memberships; isn't that right?

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That's correct.
Q You did not perform any discounted analysis to determine the present value of the income that you would -- that the company would receive from the sale of these memberships in the future, correct?
That's correct.
Q Let's look at the 2011 Statement of Financial Condition, which is Exhibit 787 in evidence. Let's go to page ten. This provides, under club facilities and related real estate, a description -- this club facilities and related real estate, this relates to the golf clubs, right?
The golf clubs and Mar-a-Lago, yes.
Q There's a description that appears that says: "Entities wholly owned by Mr. Trump have acquired certain properties for the purposes of developing"-- "for the purpose of developing them into club facilities. Several of these clubs will also contain residential units that they will sell. The estimated current value of 1,314,600,000 is based on an assessment of the cash flow that is expected to be derived from club options. The sale of residential units after subtracting the estimated costs to be incurred or recent sales of properties in a similar location."
You see that? It says that?
Yes.
Q That assessment was prepared by Mr. Trump working in

conjunction with his associates and outside professionals?
Yes.
Q This paragraph identifies three alternative methods for valuing the clubs, one of which is an assessment of the cash flow that is expected to be derived from club operations?
Correct.
Q second is the sale of residential units after subtracting the estimated costs to be incurred, right?
Yes.
Q The third method is recent sales, properties in similar location, right?
Yes.
Q Can we agree that the third method was not a method that was used by you for Briarcliff, right?
Correct.
Q If we split the screen and pull up 788 at lines 295 to 298, you listed information about a projected sale of mid-rise units approved but put on hold, correct? $43.3 million?
The 43.3 is a sellout price, yes.
Q So, you subtracted the costs related to that development and you have the net profit, right?
Yes.
Q You added that potential profit of, I think it's $25.1 million to the valuation of Briarcliff, correct?

Correct.
Q So, that method is the second disclosed method in the Statement of Financial Condition, correct?
Yes.
Q s with other valuations that include future income, there's no attempt to determine how long into the future it would take to build and sell these homes, these units, correct?
Correct.
Q There's no discounted cash flow analysis to bring those amounts to the present value, correct?
Correct.
Q So, I think we said the third method in the Statement of Financial Condition didn't apply. We've now seen, at least with respect to these additional units, you've used the second method. I don't see any line items that would reflect for Briarcliff any cash flow analysis as described in the first method. m I correct?
s described in the first method?
Q The first method in the statement says that the estimated current value is based on one method. The first method, is assessment of the cash flow that is expected to be derived from club operations. You see that?
Yes.
Q That is not a method you're using for Briarcliff,

correct?
Correct.
Q What you used is a method that includes just income from selling memberships, right?
It's a little more than that. You had the income from the memberships. You had the sale of the mid-rise units. You had the value for the clubhouse. If you could scroll up, please.
There were receivables on membership deposits and from operations from the food, dues, whatever. There were a few other items included.
Q Let me see if I can shortcut this. You disclosed in the statement three different alternative methods for valuing clubs, correct?
Correct.
Q We agree the third method is not relevant. You didn't use it, correct?
Correct.
Q You used the second method based on the 31 units, right?
Correct.
Q There is no attempt at the first method, which is cash flow from operations, and, instead, you use a different method that just includes income from selling memberships, right?

Correct.
(Continued on following page...)

Q So, anybody reading this statement and this description would have no understanding that estimated current value includes, as a component, selling memberships, without a more complete assessment of cash flow; right?

MR. FIELDS: Objection. Speculating as to what other people reading the statement would know.

THE COURT: Do you want to phrase it slightly differently?

MR. MER: Sure.

Q There's nothing in this paragraph containing the three alternate methods disclosed that indicates you have based the valuation on simply taking membership sales and including that in the value; right?

Not specifically, no.

Q nd an assessment of cash flow from operations would include looking at things such as payroll; right?

Yes.

Q nd taxes; right?

Yes.

Q nd repairs and upkeep and maintenance of the golf course; right?

Yes.

Q nd that's nowhere in your valuation analysis; right?

For this property, no.

Q Let's look at how you value Briarcliff in 2012.

MR. MER: nd we can pull up the 2012 Jeff Supporting Data, Plaintiff's 793, and let's go to line 258 [sic].

Q nd line 287 [sic] shows your valuation of Briarcliff jumped from 68.7 million in 2011 to 99.5 million, roughly, in 2012; correct?

Yes.

Q nd that's an increase of almost $31 million; right?

Yes.

Q nd line 285 shows that your projected profit from the sale of the future residential units remained the same from the prior year; correct?

Yes.

Q nd so, all of your responses about how you calculated that would be the same for this year; correct?

Correct.

Q nd lines 273 to 275 show very little change in additional value from 2011 to 2012, based on listed membership receivables; right?

Correct.

Q So, almost the entire increase, close to $30 million, is attributable to your change in methodology, to using something called fixed assets; right?

Correct.

Q Let's look at 2013, and that's Jeff Supporting Data

708, and let's look at lines 253 to 270?

THE COURT: Ten-minute warning.

Q Mr. McConney, in 2013, for the development of the units, the value jumped from 25.1 million to 101 million and change; correct?

Yes.

Q nd you increased the value of the Briarcliff development in that amount based on a September 25th, 2013, telephone conversation with Eric Trump; correct?

Correct.

Q nd this increase was based on the sale of 71 midrise units, approved but put on hold; correct?

Correct.

Q So the number of units increased from 31 to 71; is that right?

I'm not too sure. If you show me the other spreadsheet with the number -- I just don't remember.

Q Okay. We don't have to go back. But at any rate, it's based on an increase in the number of units to 71; correct?

To 71.

Q To, T-O, 71; correct?

Yes.

Q nd your information about the number of units came from Eric Trump in that call; right?

Yes.

Q nd he also, by the way, told you that the project was put on hold; right?

Yes.

Q But you're still accounting for the profit from those 71 midrise units that were put on hold, as if it's immediately realized as of June 30, 2013; correct?

Yes.

MR. MER: Now, let's look at Exhibit 205.

(Whereupon, a document was displayed, and handed to the witness.)

MR. MER: Your Honor, this is an appraisal by Cushman & Wakefield of the Briarcliff club, and I move that this be admitted me into.

MR. SU REZ: We have an objection, both based on the statute of limitations and on hearsay.

MR. MER: Your Honor, this was an appraisal that the Trump Organization obtained.

THE COURT: It comes in, not for the truth of its contents, but for what the Trump Organization knew or thought, or whatever information they had.

MR. MER: It's also an admission against interests, your Honor. It's their appraisal. Their agent. They hired Cushman to do the appraisal for them, and therefore it's their appraisal.

MR. SU REZ: Your Honor, it was sent to Sheri

Dillon at Bingham McCutchen. It's a Cushman & Wakefield Bates stamped out of Trump Organization Bates documents. There's certainly no testimony that Mr. McConney has seen it yet. Cushman is not here.

THE COURT: Well, we haven't gotten to that part, yet.

MR. MER: Just so you know, your Honor, just so you are aware, Bingham McCutchen were counsel to the Trump Organization. Their lawyers.

THE COURT: nd that makes it an admission against interests?

MR. MER: Yes. It's a document created by their agent.

THE COURT: The point of the hearsay exception for an admission against interests is, you won't say something that will hurt you. When this was drafted, put together, whatever you call it, it wasn't necessarily going to hurt them. So, I'm only letting it in to show what the -- and I think that's all you need, unless I'm missing something -- to show what the defendants knew or had access to. There's nothing about the appraisal itself that hurts them. But, you can tell me otherwise. Go ahead. Why?

MR. MER: Because it comes up with a value that's much lower than the value that they used.

THE COURT: Well, that's my point. You want to

show that it's lower than the value that they used, but the fact that internally -- I'm sorry. I just still don't see it, but it's in for the purpose that I think you need.

MR. MER: Okay.

(Whereupon, the exhibit was received in evidence.)

Q 2014, the Trump Organization sought to value a potential easement over the five-acre development site. That was the site for the 71 housing units; correct?

I have no knowledge of that.

Q Were you unaware of the appraisal?

I knew there was an appraisal, but I don't know what it was for. I -- sorry. I knew it was for a conservation easement, but I don't know the details of the appraisal.

Q re you aware of the value that the appraisal came to for the 71-unit development?

I don't believe so.

Q If we turn to page two of the exhibit, this is the cover letter that the appraiser sends to Bingham McCutchen. Did you understand that they were the Trump Organization's counsel for purposes of this easement donation?

Yes.

Q If we turn to the third page, you see it says the value of the easement donations is 43.4 -- 43.3 million; correct?

I see its value of 43.3.

Q It says market value of conservation easement; correct?

Correct.

Q nd as we discussed before, these type of appraisals, you have a before value and after value, and you subtract the two, and that's the value of the development rights being donated?

THE COURT: Subtract one from the other. You don't subtract the two.

MR. MER: Yes. One from the other, your Honor. Thank you.

Q Correct?

Correct.

Q nd so, the value of the development rights related to the 71 units, according to this professionally-done appraisal, is $43.3 million; correct?

gain, I don't know what this appraisal was for, so it's hard for me to comment.

Q I thought you were aware. So, you were not aware that there was an appraisal done for an easement donation?

I know there was easement donation. I am pretty sure I knew there was an appraisal, but I don't think I was involved in this.

Q nd in 2014, according to the Jeff Supporting

spreadsheet, which is Exhibit 719 --

MR. MER: Can we put that up?

Q You continue to value the --

This is Westchester.

Q Yes.

I'm sorry.

Q Yes. We need to go back to Briarcliff. Sorry. You continue to value the Briarcliff 71 midrise units in 2014 at $101 million, even though there an appraisal that the company has that says 43.3; correct.

gain, the appraisal is appraising -- I'm not too sure what it appraises. We did complete the same 101 million valuation for the 71 midrise units.

Q Well, let's look at page two of the appraisal, and let's look at the third paragraph. You will see it says the owner of the subject golf club is planning on donating a conservation easement over approximately 5 acres of the property. This is a development site entitled with 71 attached housing units. Do you see that?

Yes.

Q So, that's what this appraisal relates to; right? The 71 units that you value in your spreadsheet?

THE COURT: Hold on.

MR. SU REZ: Your Honor, again, there's no foundation. I believe the ruling from the Court was that

it was not admitted for the truth of the matter asserted. He testified that he's not sure if he ever saw this appraisal. The appraisal wasn't sent to Mr. McConney. It wasn't sent to anyone at the Trump Organization. It says what it says. He is not sure what it's for. There's no foundation to have him testify about.

MR. MER: Your Honor, just an objection, not a speaking objection. The witness is on the stand.

THE COURT: Well, time for the break; right? Saved by the bell. We'll address it on the way back.

s usual, we are going to take a ten-minute break that will take 15 minutes.

(Whereupon, a recess was taken.)

* * * * * *

THE COURT: Let's pick up from that interesting issue from where we left off. I want to first make sure I understand the context of the dispute.

The Trump Organization, through agent, through a third party, commissioned appraisal. The plaintiff wants the appraisal in, both for the truth of its contents and to show notice. I already said I'm allowing to show whatever notice there is but not for the truth of its content because that's what hearsay is for. Hearsay rule.

However, if plaintiff wants to pursue this, wants to admit it for the truth of its contents, pursuant to some hearsay exception, if you say you want to do this, I'll ask both sides whether you want to submit two-page memos by, two-page memos by next week or Tuesday or something. Monday is a holiday.

MR. MER: Let me confer with my colleagues to see if we need it for the truth of the matter asserted or notice is sufficient. If we want it for the truth of the matter asserted, we'll submit it.

THE COURT: nd the other side can oppose or -- when will you consult with your colleagues?

MR. MER: Later today.

MR. SU REZ: I don't want to keep popping up during the witness's testimony but if the witness is going to testify about it, I'd like to condition the testimony on the fact it hasn't been admitted yet for the truth of the matter asserted, and, also, I'd like to bring to the Court's attention that this is a document that has limitations.

It's a document that has three pages of different limitations that include what it can be used for and what it can't be used for.

MR. MER: This is improper.

MR. SU REZ: May I finish?

MR. MER: He is discussing an exhibit in front of the witness. If he wants to do cross-examination with this document when I'm done with my examination, he can do that.

MR. SU REZ: The witness is a party and, more so, even the document says "draft" on it.

THE COURT: That's what cross-examination is for. I'll allow it, the questioning, although I don't know exactly where it's going.

Q I want to continue talking about valuation of Briarcliff in 2015.

MR. MER: If we can put up the supporting data spreadsheet 731 and go to lines 255?

Q Now, the valuation of the 71 mid-rise units in 2015 remained as it was in 2014 as 101 million point 748 and

change, correct?

Yes.

Q So, we're all oriented, the appraisal we were looking at, that's Exhibit 205 admitted for purposes of notice, was from the letter, cover letter to Ms. Dillon -- if you want to put it up -- is dated pril 18, 2014, correct?

Correct.

Q So, certainly, by the time you're doing your valuation for June 30, 2015, this appraisal was done, right?

Yes.

Q You were aware there was an appraisal, correct?

Correct.

Q nd is it your testimony you didn't ask to see the appraisal?

Yes.

Q It didn't matter to you for purposes of your valuation; is that what you're saying?

Yes.

Q The original -- the value for 2014 was based on the note in 272, row 272 of the spreadsheet. This September 25, 2013 telephone conversation, you had with Eric Trump, correct?

I'm sorry. I was reading something. Can you just ask that again?

Q Sure. The value in 2014, that you put on your spreadsheet, was based on a telephone conversation with Eric

Trump on September 25, 2013, as indicated in line 272, right?
That's correct.
Q The value remaining the same in 2015 was based on a telephone conversation that you had with Eric Trump in November 17th -- on November 17, 2015, where Eric Trump said to you, "leave value as is," correct?
Correct.
Q So, notwithstanding the fact that there was this appraisal, Eric Trump told you to leave the value as is, correct?
Correct.
Q I'd like to see if we could shorten this. So, I'll just make a statement to you; and, if you're uncomfortable, we can go through all of the spreadsheets; but, the spreadsheets for 2016, 2017, and 2018 continue to use the same $101 million value for the mid-rise units and all attributed to this phone call with Mr. Trump that you should leave the value as is.
Is that consistent with your recollection?
MR. SU REZ: We object to the grouping together of different years for purposes of testimony. If there's a specific question about specific years in specific spreadsheets, that should be the question. Not lumping them altogether.
THE COURT: I'm allowing the lumping together. Objection overruled. Let's be clear. He's asking about

all three years. We're just lumping them together.
Can we just take a look at the three years to make sure?
Q bsolutely. Why don't we look at 2017 because it will give us 2017 and 2016, and that's 758 and it's line -- 278.
You'll see, Mr. McConney, the value remains the same for both '17 and '16 and it has the note that attributes that to Eric Trump saying "leave value as is," correct?
Correct.
Q So, those values remained as is based on your telephone conversation with Eric Trump, correct?
Correct.
MR. MER: Let's go to 2018. It's plaintiff's 774 native and we'll go to line 295. Just so the record is clear, in the prior exhibit we were looking at lines 278 to -- we just have to straighten out the line numbers, the row numbers.
Q So, it's row 298 has the profit being 101 million and the conversation with Mr. Trump is on line 301, correct.
Correct.
Q Okay. That's for both 2016 and 2017, correct?
Correct.
Q Let's go to 2018. Exhibit 774, line 295 is where Briarcliff starts and, again, 2018 stays the same at 101

million and change and it's attributable, in your note on line 312, to your conversation with Eric Trump, leave value as is, correct?
Yes, but, I'd like to make the statement that between June of '16 and June of '17, Patrick Birney was taking over the Statement of Financial Condition. I don't think I was involved in the June of '18 statement.
Q Okay.
So --
Q Looking at the control spreadsheet, though, that is what is being indicated as the source for keeping the value the same in 2018, correct?
That's correct.
Q It's your phone call, right? It's your phone call with Eric Trump?
I had the phone call back in 2015, yes.
Q Okay. I want to switch topics with respect to golf courses. It is correct that you included in your valuation of some of the golf clubs starting in 2013 a 30 percent grand premium, correct?
Yes.
Q The inclusion of that grand premium was something that you and llen Weisselberg decided to do, right?
Yes.
Q t some point after adopting that 30 percent premium,

you changed it to a 15 percent premium, but, it was still a premium that was added to the same golf clubs, correct?
Yes.
Q Was that change to 15 percent also something that you and Mr. Weisselberg decided to do together?
Yes.
Q If we could pull up the 2013 statement, it's Exhibit 707 in evidence -- 708.
Exhibit 707 in evidence, the Statement of Financial Condition, if we go to page six where it says "basis of presentation."
The bottom paragraph that begins: "Pursuant to G P." Do you see that?
Yes.
Q The last sentence of that paragraph says: "The goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement."
Do you see that?
Yes.
Q That sentence is in every one of the statements under "basis of presentation" from 2011 to 2021; isn't that right?
I can -- I believe up until 2016/2017 it was there. I really wasn't involved after that.
Q Okay. So, you can confirm that, at least from 2011

to 2016 or '17, this sentence appears in the "basis of presentation" section, correct?
Yes.
Q nd every year that you were, from 2013 forward, that you were adding the 30 percent premium or the 15 percent premium, you were aware that this sentence was contained in the "basis of presentation" section of the statement, correct?
Correct.
Q m I correct that the Trump Organization in 2012 shifted away from valuing golf clubs based on projected income from future membership sales, like we saw with Briarcliff, and started to use something known as a fixed assets approach?
We changed at a point in time. ll the golf courses that were using that valuation method changed at the same time. I'm getting to it.
So, if the statement, the spreadsheet we were looking at before -- I don't remember the years when we switched. So, if you look at Briarcliff when we switched, I can give you an answer.
Q I think it's just enough to get your confirmation that at some point you switched from using an approach that valued the sale of memberships to a fixed assets approach, correct?
That's correct.
Q Every year that you use the fixed assets approach for

a particular golf club, you'd ask the controller at each golf club for the value of the club's fixed assets and then you'd enter that in your spreadsheet, correct?
Correct.
Q I'd like to look at the valuation for Jupiter, and, that's a course that the Trump Organization purchased in 2013; is that right?
It purchased it. I'm not sure -- I don't remember the exact year.
Q Let's go ahead and put up the 2013 supporting spreadsheet in native, I think it's 708. It's in evidence.
If we go to row 462, this is the row that starts the valuation for Jupiter, correct?
Yes.
Q You'll see it has on line 465, value of fixed assets, correct?
Correct.
Q So, for Jupiter, at least in 2013, you're using the fixed assets approach, right?
Yes.
Q nd am I correct that under the fixed assets approach, you included, in the purchase price of the club, that you then included, as part of the value of the fixed assets, the amount of liability associated with refundable membership deposits?

I'm sorry. Can you ask that question one more time?
MR. MER: Sure. ctually, let's back up.
Q We looked at membership sales and those were nonrefundable memberships, correct?
Correct.
Q There was something different called refundable membership deposits, right?
t one time, yes, and, I guess, they still exist, to some extent.
Q Right. Those are deposits that members make that at some point in the future they may be entitled to get back; is that right?
That's correct.
Q nd am I correct that the refundable membership deposits are different from the nonrefundable membership fees, that those refundable membership deposits were for Jupiter included in the purchase price of the club for purposes of valuing the fixed assets number?
Part of them, yes.
Q Let's take a look at how that worked, and I'm going to put up plaintiff's Exhibit 3055.
Mr. McConney, the first page is an e-mail. The second page is a slip sheet for the attachment that we're going to pull up in a minute, and, this is an e-mail that you sent to a gentleman by the name of Frank Lucas. It's about

Jupiter and the attachment is Jupiter purchase. You see that?
Yes.
MR. MER: Your Honor, I ask that this exhibit be admitted with the attachment.
MR. SU REZ: We object on the basis of the Statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, said exhibit was received in evidence as Plaintiff's Exhibit 3055)
Q Let's pull up the attachment, which is Exhibit 3055, native one, and, you'll see it says: "Jupiter Golf Club, LLC allocation of purchase price."
Do you see that?
Yes.
Q This is the backup for calculating the purchase price for purposes of using it in the fixed assets valuation for this club, correct?
This is the journal entry that was booked to show however the purchase price was allocated. So, it could be fixed assets, goodwill. It could be allocated to a number of places.
Q But you're using this for purposes of doing your valuation for the fixed assets basis for the Jupiter Club, correct?
Yes.

Q What this shows is, on line five, cash of $5 million. You see that?
Yes.
Q That was the actual amount of money that was paid to purchase Jupiter?
I don't remember, off the top of my head, but, I believe so.
Q Then there's a line item on line six called Member Deposit Liability ssumed, and it's over $41 million, correct?
Correct.
Q Then there are closing costs that are included and you get a total purchase price of over $46 million, correct?
Correct.
Q So, let me just understand what's happening here in calculating this purchase price. You have $5 million in cash and you're assuming a liability to repay to members their deposits of over $41 million and then you add closing costs and you get to the purchase price; is that right?
That's correct.
Q So, this calculation of the purchase price, assumes that the member deposit liability will have to be repaid at face value, correct?
Correct. Can I clarify one thing? Face value being the amount that the member gave the club, right.
Q Correct?

Yes.
Q Okay. Now, if we could go to-- and this purchase price, by the way, including the member deposit liability at face value, is what you plug into your fixed assets calculation for the valuation of Jupiter in the statement, right?
Can you ask that again?
Q Sure. The purchase price that we're looking at of over 46 million, is what you include for the purchase price in the fixed assets calculation for the statement, right?
Yes.
(Continued on following page...)

Q Now, let's go to the 2013 statement, which is Exhibit 707, and let's go to page 15.
nd this is the description for Jupiter; right?
MR. MER: If you just scroll down, so we can see the heading.
Q See Jupiter?
Yes.
Q Okay. So, let's look at that second paragraph.
Wait, something -- I'm looking at Doral. Sorry.
Q That's okay. re you there?
Yes.
Q Okay. Second paragraph says, "One condition of membership was the contribution of a non-interest-bearing deposit that does not require repayment until certain terms are met, and then only upon the member's resignation. The fact that Mr. Trump will have the use of these funds for that period, without cost, and that the source of repayment will most likely be a replacement membership, has lead him to value this liability at zero."
Do you see that?
Yes.
Q It goes on to say, through 9/30/2013, these deposits amounted to $41 million; correct?
Correct.
Q So if I understand what's happening here, you are

including the value of the membership deposits as a liability that increases the purchase price of the club to the tune of $41 million; correct?
That's correct.
Q nd at the same time, you are representing, or the statement is representing, that those liabilities are being valued at zero; is that correct?
That's correct.
Q nd there is no entry on the liability side of the statement that would indicate any obligation to repay these membership deposits; is that right?
The liability side of which statement?
Q The Statement of Financial Condition has assets and liabilities; right?
Correct.
Q nd there's no entry on the liability side on the statement that indicates any obligation to repay these membership deposits; correct?
There's no amount reflected. That's correct.
THE COURT: Let me jump in a second. I'm the one that has to understand everything.
Estimated current value, what would it sell for, basically, willing buyer, willing seller, the fixed assets approach, I think, is how much did it cost us to buy this thing and fix it up, develop it, whatever, and then the

assumption is, well, what you pay for it is what it's worth; is that correct?

MR. MER: Yes, and it assumes that the liability is an obligation of the owner who buys it, so if I pay -- let me see if I have a hypothetical that may clarify it. If I buy a piece of property for a million dollars, but it comes with an obligation to pay a million dollars, then it's really costing me $2 million. It's costing me the million dollars I pay to buy it, and then I have an obligation to pay another million because there's some IOU on the property, let's say. So, it costs me $2 million, but the point I'm making --

THE COURT: But you have got something that's only worth $1 million. Is that --

MR. MER: It is, but I've indicated in the statement that I've valued the liability that I'm assuming at zero, so that's the --

Q The issue here is, you have valued the liability at face value for calculating the purchase price that you use; correct?

That's correct.

Q nd you simultaneously represent in the statement that you're valuing the liability at zero; correct?

Correct.

Q Okay. nd with respect to the membership liability

deposits, even if they do have to be repaid at some point in time, that's way out into the future; correct?

Depends when the member joined, but it's sometime in the future.

Q nd you don't do any discount factor analysis to figure out, for the purpose of the fixed-asset approach, what the present value is, of that liability; correct?

Correct.

Q nd you include it as though it's a hundred percent due on the date of the valuation of the statement; correct? The valuation date of the statement?

Correct.

Q Okay.

MR. MER: I intend to move on, unless the Court has more questions to clarify, at this point.

THE COURT: Please just move on.

MR. MER: Thank you.

Q I want to talk about Mar- -Lago.

MR. MER: Let's look at the 2012 Jeff Supporting Data spreadsheet. It's Plaintiff's 93, and it starts at row 187.

(Whereupon, a document was displayed, and handed to the witness.)

Q Now, row 188 says, Value if sold to an individual. Do you see that?

Yes.

Q nd that applies to both of these years, 2011 and 2012; correct?

Correct.

Q nd the entire basis of the valuation rests on the premise that Mar- -Lago can be sold as a private residence to an individual; right?

Yes.

Q If we put up demonstrative exhibit 3.10, this lists the value of Mar- -Lago in each year, from 2011 to 2021. Mr. McConney, is it correct that every year, the value of Mar- -Lago is based on the premise that the property can be sold as a private residence?

That's correct.

Q nd as of the date that you began preparing -- Sorry.

Q Go ahead.

The year I was involved in preparing the statement. gain, June of '16, June of '17, I'm pretty sure. But I didn't work on June of '18 forward, so.

Q So let's just clarify your testimony. Your testimony is that from every year from 2011 to 2016/2017, you were aware that the premise of the valuation was based on the fact that the property can be sold as a private residence; right?

That's correct.

Q nd you are not sure, one way or the other, what the premise was for the valuation in the years from 2018 through 2021; correct?

Correct.

Q nd as of 2011, when you were preparing the valuation for Mar- -Lago, you were aware, were you not, that there was a deed of development rights that Mr. Trump had entered into with the National Trust for Historic Preservation?

When the club initially opened, I know there were some documents relating to the deed. I don't know exactly what they were, but I know there was some rules you had to live by.

Q Okay. Let me be more specific, because there are a number of deeds. You were aware, as of 2011, that there was a 2002 deed of development rights with the National Trust for Historic Preservation; isn't that right?

I know there was something with the National Trust. I don't know what the exact title.

Q re you saying -- well, did you see the deed of development rights, prior to 2011?

I could have seen it when we first -- the club first opened. I just don't remember that far back.

Q When you say, when the club first opened, when was that?

I'm thinking 1995.

Q Did you see a deed of development rights around --

later than that, in the 2000s, with the National Trust for Historic Preservation?

No.

Q re you sure?

I'm pretty sure.

Q Okay. nd were you aware that Mr. Trump had deeded away his right to use the club for any purpose other than a social club?

MR. FIELDS: Objection. Speculation. The witness testified he didn't see the deed. How could he be aware?

THE COURT: How could he be aware? Somebody told him, maybe?

MR. FIELDS: Then objection to hearsay.

MR. MER: I'm entitled to --

THE COURT: -- introduce it for the truth of its contents, its notice, I think.

But Mr. mer, see if you can get us through this tangled web.

MR. MER: I don't know what's tangled about this web, your Honor, but I'll try.

Q You are doing valuations from 2011 forward; right?

Yes.

Q Do you have an understanding as you are doing these valuations, based on the premise that you can sell this property

as a private residence, that there was -- that Mr. Trump had deeded away his rights to use the property for any purpose other than a social club? Yes or no, or were you aware?

MR. SU REZ: Objection. It also assume facts not in evidences, mischaracterizing the trust and the deed that was referenced. It's just not the case, and there's no evidence in the record that that is the case.

MR. MER: I honestly didn't ask him, your Honor, how he knew. I just want to know if he is aware.

THE COURT: bsolutely overruled.

Sorry. Could you ask the question again, please?

MR. MER: Can I get a read back, your Honor?

THE COURT: Sure.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

THE COURT: Please answer.

I was not aware.

Q Now, the valuation that you prepared for Mar- -Lago, that's largely based on comps; is that right?

Correct.

Q Let's go ahead and look at the -- well, actually, let me see if I can do it this way. Let's go ahead and put up the -- oh, let's leave up the 2012. Sorry.

Okay. Back to where we were. You have listed comps for 2012 and 2011; correct?

Correct.

Q Now, I notice for 2012, you have two comps and they're based on asking price; correct?

Correct.

Q nd the two comps for 2011, also based on asking price; correct?

Correct.

Q So these are not prices that a willing buyer actually paid; right?

I don't know what -- if these were purchased, I don't know what they were -- what the purchaser paid for these properties.

Q Right. But as of the date that you used these prices, they were asking prices and not prices for properties that had actually sold; correct?

That's correct.

Q nd I notice that what you do is, you take the asking price and you divide it by the number of acres to come up with a number per acre; correct?

Correct.

Q nd then you then multiply that value per acre by the acreage of Mar- -Lago, on line 214; correct?

That's correct.

Q So, if I'm understanding this correctly, the actual square footage of the house that's being put up for sale is not

relevant to your calculation?

I don't -- I'm not too sure I understand that question.

Q Okay. You are taking the asking price, and you are dividing it by the acres that the property sits on, without any factoring in how large the house is; right?

But it does include a house, or some swimming pool, cabana. It does include something. It's not just the value of the land.

Q Let me ask a different way. You are not calculating a price per square foot to do this comp; correct?

Correct.

Q Okay. So, if you have two identical homes asking the identical selling price, and one is on a two-acre lot and the other is on a four-acre lot, the one on the 2-acre lot will have a value, for your purposes, that's twice as large as the house on the four-acre lot; correct?

Mathematically, yes. That's correct.

Q Isn't the method you are using, which is to calculate a value per acre, the method one would use to value vacant land, as opposed to a house?

MR. FIELDS: Objection. Speculation. Lack of foundation.

THE COURT: Overruled.

Can you ask it again, please?

Q Isn't the method that you are using, where you take the asking price and divide it by the number of acres, a valuation method used for valuing and comparing vacant land, as opposed to a private residence?

I guess you could do it that way. We took the whole selling price, including the house, and divide it by the number of acres. I guess you could use it for vacant land, but these comps included whatever was being sold.

Q nd the size of the house didn't matter in your calculation, because you don't use it in the calculation; right?

It was not used in the calculation. Correct.

Q Then, by the way, you add, if you can scroll down, you add, on line 216, a premium for completed facility of 30 percent; right?

Correct.

Q Did you -- so, you just take whatever number you get from the comp and you gross it out by 30 percent, because it's a completed facility; right?

Correct.

Q But you are valuing it as if you are selling it as a private residence; right?

Correct.

Q m I correct that when you started doing the valuation for the following year, 2013, you realized that it was better to use actual sale prices, rather than asking prices? Correct?

Somebody made that decision, yes. It was either llen or myself.

Q Okay. So some combination of you and Mr. Weisselberg decided, in 2013, that it's better to use selling prices rather than asking prices; correct?

t some point in time we changed, yes.

Q Let's go ahead and look at 2014 Jeff Supporting Data, Exhibit 719.

MR. MER: nd I may want you to put it up, side by side, if we can, and let's go to row 207, where the value began, where the Mar- -Lago value begins. If you could, just lift up the one on the left.

Q So, in 2013, you have, again, two comps.

MR. MER: I just need to see a little below.

Q You have two comps; correct?

Can we just scroll?

Q Yes.

MR. MER: You have to go down, more. There we go.

Q I'm sorry. Just one comp for 2013; correct?

Can we just to be 100 percent sure, scroll over to column G? I believe that's correct. I just want to make sure.

Yes. That's correct. Only one comp.

(Continued on the next page.)

Q That compensation is 1220 South Ocean Boulevard, right?

Yes.

Q If you scroll down on the other one, other way. Sorry. It's the same comp that you used the prior year, right? 1220 South Ocean, Palm Beach, correct?

Yes.

Q In 2012 -- we can go up a little more so I see the price. In 2012, you're using the asking for the 2020 South Ocean, Palm Beach of $74 million?

Yes.

Q That's the asking price and then the next year you realized that the same property sold for $42 million, correct?

Correct.

Q In your description on line 224?

Which? 1314?

Q On 1314.

Yes.

Q You say actual selling price, not just selling price but actual selling price, correct?

Correct.

Q nd on line 212, you just say selling price for the other comp on line 212?

On the same spreadsheet?

Q Same spreadsheet.

Yes.

Q The reason why you inserted that word "actual" is because you realized you had used the same comp the year before and you used the asking price and now it was an actual selling price, correct?

I don't know if I realized what you said but there was a reason for it. It's the actual price, is the actual price.

Q But using the word "actual" you're kind of acknowledging you used the same comp from the year before but used the selling price?

I'm not acknowledging the same comp from the year before. The actual comp we used is the selling price. I don't remember --

Q Was this the reason you decided it was better to use selling prices than asking prices because it dawned on you that a property that you valued with an asking price of $74 million actually ended up selling a year later for only $42 million?

I don't remember that being the case, one way or the other.

Q By the way, I noticed in 2012 the number of acres for this property is 2.5 acres, correct?

Correct.

Q year later, the property is only 2.11 acres,

correct?
Correct.
Q So, the acreage changed?
We'd have to look at the source documents each year.
Q The effect of changing the acreage from 2.5 to 2.11 increases the value per acre, correct?
In 2013?
Q Yeah.
Yes.
Q Let's go to PX-2374. Mr. McConney, is Exhibit 2374 the backup that you sent for the comps to Mr. Bender?
Yes, I believe so. For Mar-a-Lago, I believe so, yes.
Q It shows the 1220 South Ocean Boulevard house selling for $42 million, correct?
Yes.
MR. MER: Your Honor, I ask that this be admitted into evidence.
THE COURT: Granted. It's in.
MR. SU REZ: We only object if it's being offered for the truth of the matter asserted because it would be hearsay. The fact that, to the extent that he testified that he sent it to Mr. Bender, that's a different story.
THE COURT: Is that agreeable just for the fact

he sent it, the notice, as opposed to the truth of the contents? That could be part of your two-page memo. You can make it three pages now.
MR. MER: That's fine, your Honor.
Q Let me ask, Mr. McConney, you relied on this backup in performing your valuation, right?
Yes.
THE COURT: So, is that sufficient?
MR. MER: That should do it.
THE COURT: So, it's not going in for the truth of its contents.
Q The third page, is this where you get your acreage figure from for the comp at 1220 South Ocean Boulevard?
Yes.
Q Let me ask you to turn to -- and you then had to take the price per acre and multiply it by the acreage for Mar-a-Lago to do your valuation, correct?
Correct.
Q If you go to page five, and this highlighting is in the original document, is this where you get the acreage figure for Mar-a-Lago that you use in your valuation?
Yes.
Q Now, Mr. McConney, can you turn to the page just before this one. There was an appraisal done of Mar-a-Lago in 2007, correct?

Yes.
Q You knew about that appraisal, right?
Yes.
Q You had a copy of that appraisal, correct?
I believe so, yes.
Q You relied on the page we saw from this appraisal for purposes of valuing Mar-a-Lago, correct?
Yes.
Q That was an appraisal done in contemplation of a conservation easement donation over Mar-a-Lago back in 2007, right?
I don't know what the purpose was, off the top of my head. It says "conservation easement" here on the bottom of page 506. So, I believe that's what it was for.
MR. MER: I'm going to ask to hand the witness Exhibit 1444.
Q Mr. McConney, this is the full appraisal of Mar-a-Lago, 169 pages. You had a copy of it, correct?
I don't remember but it's possible.
Q Well, you attached the cover page to the backup you sent to Mr. Bender, right?
Right.
MR. MER: I ask that this be moved into evidence, your Honor.
MR. SU REZ: Your Honor, we have an objection

first on the basis of the Statute of Limitations. Second with the appraisals, the fact that the appraisal exists, the fact it was in the file, the fact he may have looked at it, that certainly whatever his testimony is, it is, but, we object to the appraisal to the extent it's being offered for the truth of the matter asserted within it.
There are, obviously, issues in the appraisal, limitations, whatnot. This wasn't prepared for a party in this case. It wasn't prepared by a party in this case. The appraisal company is not here. That would be the extent of our objection to the extent it's being offered for the truth of the matter asserted.
It's an out-of-court statement as well.
THE COURT: Maybe three-and-a-half-page memos.
MR. MER: First of all, your Honor, the statement that it wasn't prepared for the Trump Organization is wrong. It's prepared for Mar-a-Lago Club, LLC.
Q That's a Trump Organization, right, Mr. McConney?
The --
THE COURT: I'll ask the witness to answer.
THE WITNESS: I don't know who goes first. The Mar-a-Lago Club LLC was owned by, ultimately, the President, yes.
MR. SU REZ: My client is-- it's not a defendant

in this case. It's not a party.
THE COURT: Okay.
MR. MER: I'm going to do this quickly. We're stopping when, your Honor? Just so I know.
THE COURT: Fifty.
Q If we look at page two, this report says in the second sentence: "This report has been prepared for our client, Mar-a-Lago Club, LLC. The intended use was to assist and establish market value of a conservation of easement for possible donation." You see that?
Yes.
Q In the second paragraph, just going to go down to the middle of the paragraph, it says: "The value of the property, before considering the terms of the easement, is compared to the value of the property after considering the easement. The difference in value, if any, is the value of the easement."
It's an easement related to the development of 11 single family lots. Do you see that?
Yes.
Q To your knowledge, was there ever any approval given for the development of any single family lots on the Mar-a-Lago property?
I have no idea.
Q Why don't you turn to page 88. There's a section of this appraisal entitled "Deed of Development Rights." "Deed

of conservation easement and exhibits."
You see that?
Yes.
(Continued on following page...)

Q nd the next page, the next three pages, are the deed of development that was entered into in 2002, between Donald Trump and the National Trust. Do you see that?
Yes.
Q nd on page two of this deed it says that Mr. Trump is conveying his rights to develop the property for any usage other than club usage. Do you see that? That's the paragraph above the signature block. Next page, last line, above the, In witness whereof. Do you see that?
Yes.
Q You knew about this appraisal, and you had a copy of it in your possession, prior to 2011; right?
Correct.
Q nd so you had a copy of this deed of development; correct?
Yes.
Q nd notwithstanding the fact that you had, in your possession, this deed, every year from 2011 through 2016 or '17, you valued the property as if it could be sold for private residence; right?
That's correct.
Q Now, Mr. McConney, you testified that during the period of time when you were the controller, llen Weisselberg was your boss; correct?
Correct.

Q nd am I correct that during the period of time when llen Weisselberg was your boss, he asked you, on more than one occasion, to assist him in committing fraud? Isn't that right?
No.
Q You gave testimony in the criminal trial of the Trump Organization brought by the District ttorney of New York; correct?
Yes.
Q Isn't it the case that you testified in that trial that Mr. Weisselberg asked you, on more than one occasion, to assist him in committing tax fraud?
Yes.
Q nd at his request you helped him cheat on his tax returns; isn't that right?
I had nothing to do preparing his tax returns.
MS. H BB : Objection. I'm just going to ask what the relevance of this is.
MR. MER: I think it's highly relevant, your Honor.
THE COURT: Overruled.
Q m I correct that you assisted him in receiving tax-free personal expenses, and then backed the value of those expenses out of his salary? Right?
That's correct.
Q nd Mr. Weisselberg directed you to process a payroll

check to his wife for $6,000 so that she could qualify for Social Security benefits, even though you knew she was not an employee of the Trump Organization; correct?

I'm not too sure the dollar amount, but the rest of the statement is correct.

Q So, I'll rephrase it.

Mr. Weisselberg directed you to process a payroll check to his wife so that she could qualify for Social Security benefits, even though you knew she was not an employee of the Trump Organization?

MR. FIELDS: Objection. Improper impeachment. Relevance.

THE COURT: Overruled.

Q Mr. McConney, when you processed that payroll check for Mr. Weisselberg's wife, you knew it was illegal; correct?

I did not know it was illegal.

Q You did not?

I did not.

Q Can we put up, from Mr. McConney's testimony during the criminal trial, page 1407, line 5.

(Whereupon, a document was displayed.)

Q "Question: Did you testify on cross examination that the purpose of this was to have her qualified for Social Security?

" nswer: Yes. Something to do with Social

Security benefits.

"Question: Did you think it was legal to pay her for a job she did not perform, so that she would qualify for a benefit to which she was not entitled?

" nswer: No.

"Question: So you knew that that was illegal?

" nswer: Yes. Yes. You can say that. Yes. Yes."

Four yeses. That was your sworn testimony during the criminal trial; correct?

Yes.

Q nd even though you knew that these activities that you engaged in at Mr. Weisselberg's request was illegal, you continued to engage in them; isn't that right?

Continued in what way?

Q You kept doing it; correct?

Yes.

Q nd you engaged in this illegal conduct because Mr. Weisselberg was your boss, and you were afraid that if you refused his requests, you would probably lose your job; right?

Yes.

MR. MER: That's all I have, your Honor?

THE COURT: I guess we'll break for the day. Monday is a holiday, and we'll resume Tuesday at 10:00.

MR. MER: Your Honor, because the witness is

still on the stand, can we have an admonition that he not consult with his attorneys about his testimony?

THE COURT: Yes. I so direct him.

MS. GREENFIELD: Just one scheduling question, Mr. mer. How much more, how much longer do you think you are going to be with Mr. McConney before we move on to Mr. Weisselberg on Tuesday?

MR. MER: Maybe I wasn't clear, but I finished my examination.

MS. GREENFIELD: Oh, sorry. I wasn't clear on that. Sorry.

MR. MER: It seemed like a good point to end.

THE COURT: So, we are starting just with Weisselberg?

MS. F HERTY: Unless they have cross.

MS. H BB : Can we reserve the right -- I don't think we do. Think we are going to let him go. You know, I'm not going to cross. Just --

THE COURT: So we are starting with Weisselberg?

MS. H BB : We are starting Weisselberg on Tuesday morning.

MS. F HERTY: Tuesday morning, Weisselberg.

THE COURT: Tuesday at 10:00.

MR. SOLOMON: Mr. Weisselberg.

THE COURT: Have a great three-day weekend.

MS. F HERTY: Your Honor, Colleen Faherty, on behalf of the People, and I can speak separately with counsel just to double check, but there were some corrections to the transcript that I do think require us to put on the record, because I don't think we can back-date the corrections to exhibits as they are contained in the record, so I'll speak with counsel, and I can even just submit it in a letter to the Court, if that works. What is your preference?

THE COURT: Sure. My preference is whatever your preference is. Whatever you can work out with the other side. How long would it take if we did it right now?

MS. F HERTY: I have an email right now that I can read from that identifies the corrections, and then if counsel has an issue, we can respond.

THE COURT: ll right. Let's do it.

MS. F HERTY: Okay. So at the trial transcript, at page 119, lines 11 through 12, Plaintiff's Exhibit 75 was admitted, and is currently in the record as PX75. It needs to be corrected to 785.

THE COURT: ny objection or --

MS. F HERTY: Typographic.

MR. SU REZ: No.

MS. H BB : No objection.

MS. F HERTY: Thank you. The second is

Plaintiff's Exhibit 788 was admitted into evidence, but identified on the record by Bates number as Mazars-NY G-00003154. The exhibit number needs to be added. It is from the trial transcript at 157, line's 2 through 11, and so the exhibit number that we would add to the record is Plaintiff's Exhibit 788.

MS. H BB : No objection.

MS. F HERTY: Thank you, Ms. Habba.

The third issue, your Honor, is Plaintiff's Exhibit 791 was admitted into evidence on October 3rd, but the exhibit number is not in the record. Plaintiff's Exhibit 791 needs to be added. That's at the trial transcript at 191, lines 5 through 18. It was admitted into evidence, but the number was not --

MS. H BB : No objection.

MS. F HERTY: Your Honor, I have two more, apparently. Trial transcript at 471, 19 through 472, 11, Plaintiff's Exhibit 1354 was admitted into evidence on October 4, but the exhibit number was not on the record. So, Plaintiff's Exhibit 1354 needs to be added, please.

MS. H BB : No objection.

MS. F HERTY: nd the last one is at trial transcript page 477, lines 10 through 11, Plaintiff's Exhibit 1501 was admitted on October 4, but was identified on the record, or in the record, as Plaintiff's

Exhibit 50101 and it just needs to be corrected to say Plaintiff's Exhibit 1501.

MS. H BB : No objection.

I just want to make the record clear and state that obviously I have no objection to these administerial changes, but if we had any prior to objections to the exhibits themselves, that they still stand.

THE COURT: Of course. No waiver.

MS. F HERTY: Thank you, your Honor.

Okay. Now, have a good three-day weekend.

* * * * *

(Whereupon, the proceedings were adjourned to Tuesday, October 10, 2023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.

LLEN WEISSELBERG

October 10, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; HOLDINGS, LLC; HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
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Supreme Courthouse
60 Centre Street
New York, New York
October 10, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

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THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Latops and cellphones will be permitted, but only to members of the public, members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Please be seated and come to order.

THE COURT: Welcome. Good morning. Hope you all had good long weekends.

Counsel, I understand there's some agreements on scheduling.

So plaintiff, why don't you set forth and then we will hear from defendants.

MR. W LL CE: Certainly, your Honor. So obviously, this morning, the first witness will be llen Weisselberg. Our expectation is that his testimony will take the rest of the day today and could extend into tomorrow. Pursuant to our agreement to take one witness out of order, though, tomorrow morning we'll start with Nicholas Haigh and we will continue his testimony until it is completed because he's the witness who's leaving the country.

fter that, we will either continue with any unfinished testimony from Mr. Weisselberg. lthough, I understand defendants are not planning to cross-examine him after our exam or are reserving, but they can give that when

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his exam comes up. The next witness is Patrick Birney who is a Trump Organization employee.

Then after that Mark Hawthorn, another Trump Organization employee followed by Donna Kidder and we expect that between Mr. Hawthorn and Ms. Kidder, that will take us through the end of this week and into Monday. We are then I think going to begin Michael Cohen on Tuesday. So that is the current plan as far as the order of witnesses.

THE COURT: Thank you. That's fine with me.

Defendant.

MR. KISE: That sounds correct, your Honor.

THE COURT: Okay. ll right. Plaintiff, call your next witness. First, wait. One of these days, I'll remember. I think we have some photographers that want to come in, so look your best.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Plaintiff, would you like to call your first witness now.

MR. SOLOMON: Good morning, your Honor. Louis M. Solomon on behalf of the People. We call llen Weisselberg.

THE COURT: Good morning.

THE COURT OFFICER: Good morning, sir. Please raise your right hand. Do you solemnly swear and affirm any testimony you give will be the truth, the whole truth and nothing, but the truth?

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THE WITNESS: I do.
THE CLERK: Please take a seat. Please state your name and either home or business address on the record, as close to the mic phone as you can.
THE WITNESS: llen Weisselberg, 6554 Piemonte Drive, Boynton Beach, Florida.
THE COURT: Okay. I'll ask the witness, as he is doing already, to speak loudly, right into the microphone.
THE WITNESS: Yes, sir.
THE COURT: Clearly and slowly, et cetera. Okay. Please proceed.
MR. SOLOMON: Thank you, your Honor.
DIRECT EX MIN TION
BY MR. SOLOMON:
Q Good morning, sir.
Good morning.
Q I would like to begin with some questions about your background. Did you receive a degree from Pace University in or about 1971?
It was actually Pace College at that time.
Q nd was that in business administration?
Yes.
Q Were you ever a CP ?
No.
Q Do you have any formal or informal accounting training

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since graduating from Pace?
I worked for a short time in accounting, but not very long.
Q That was prior to about 1976, correct?
I would say so, yes.
Q re you aware of any accounting standards that apply to the preparation of a personal financial statement?
I'm sorry. I don't quite understand. m I aware of them?
Q Yes.
Not being a CP , the answer is I know of G P. I've heard the term used before, but I -- that's about it.
Q nd when you say G P, you're referring to the Generally ccepted ccounting Principles in the United States, correct?
I've heard that term, yes.
Q Yes.
Do you know any of the components of G P?
No.
Q Do you know Jeffrey McConney?
I do.
Q Do you know his level -- withdrawn.
Did you know his level of familiarity with G P in or about 2011?
It's quite some time ago. I've been through quite a

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bit the last few years as you all know, and thinking back to 2011, I know he worked for a CP firm. I hired him from that firm at the time. His level of knowledge of G P, I don't know.
Q Did you ever come to have an understanding as to Mr. McConney's level of knowledge of G P?
Not that I could recall.
Q Let's talk about your work history.
Did there come a time that you began working with Fred Trump?
I began my career with the Trump family, Fred Trump in particular, in 1973.
Q nd did Mr. Fred Trump's business involve real estate in New York?
Yes.
Q Is it fair to say, sir, that you have been involved in real estate in New York for almost 50 years?
Yes.
Q Did there come a time that you began working with Donald Trump --
Yes.
Q -- was in or about 1986?
That's correct.
Q nd when you began working with Donald J. Trump, did you have a title?
I came into his office to work as the controller.

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Q nd were you the controller for the Trump Organization?
Yes.
Q Did you eventually become the CFO, Chief Financial Officer, of the Trump Organization?
Yes.
Q Do you recall if that was approximately in 2002?
Sounds about right, yes.
Q Did you report to Donald Trump at that time?
I did.
Q Did you report to Donald Trump between that time and when you left the company?
Well, when he became president and he was no longer there, the reporting was more little more informal and I dealt mostly with Eric Trump.
Q When Mr. Trump became president, did you also deal with Donald J. Trump, Jr.?
Periodically.
Q Did you also deal with Ivanka Trump at that time?
No, she had already left and was in Washington, D.C.
Q Had you dealt with her prior to Mr. Trump becoming president?
To a degree, yes.
Q In connection with various loans that the Trump Organization was soliciting from lenders?
Correct.

Q When do you recall Mr. McConney -- withdrawn.
THE COURT: Withdrawn.
MR. SOLOMON: Withdrawn.
Q Do you recall when Mr. McConney began working for the Trump Organization?
I don't recall the timing exactly. I would say somewhere maybe in 1987, give or take.
Q Did Mr. McConney report to you when he began working in the Trump Organization?
Yes.
Q nd when you were promoted to CFO in 2002, did Mr. McConney continue reporting to you?
Yes.
Q Did he report to you until you left the Trump Organization?
Yes.
Q Do you know Patrick Birney?
I do.
Q Did he work at the Trump Organization?
Yes.
Q When did he begin his employment with the Trump Organization?
I don't recall the exact date. I don't know -- a few years -- six years ago.
Q pproximately 2016/2017 time period?

Sounds about right.
Q When he began his work at the Trump Organization, did he report to you?
No.
Q Did he report to Mr. McConney?
No.
Q To whom did Mr. Birney report?
Ron Lieberman.
Q nd up until the time you left the Trump Organization, did Mr. Birney report to Mr. Lieberman?
Mr. Birney had multiple tasks that he performed. He came there -- he came through our company from on, so that was an insurance brokerage firm and Ron Lieberman handled our insurance. So most of his reporting was to Ron Lieberman, but if over time he began doing some work in finance because he is a financial analyst, he would report to myself or to Jeffrey McConney, either/or.
Q In fact, did Mr. Birney work on the Statements of Financial Condition between 2017 and your departure from the Trump Organization?
I don't know when he actually began to work on it. Jeffrey McConney was the one who prepared the Statement of Financial Condition and when he engaged Patrick Birney to work with him, I don't have that date in my mind.
Q But at some point in time, you are aware that Mr.

Birney started working on the preparation of the Statements of Financial Condition?
Correct.
Q That work continued, to your knowledge, until your departure from the Trump Organization, correct?
Correct.
Q From 2011 until your departure, did you have an office at the Trump Organization?
I did.
Q Was that at 725 Fifth venue?
Yes.
Q Did you have the same office throughout the entire time period 2011 to your departure?
Yes.
Q t any point in time, was there a bookshelf, bookcase or filing cabinet outside your office, sir?
There were many filing cabinets and bookcases.
Q I'm talking about one located right outside your office.
There was a filing cabinet there.
Q Do you recall whether there were appraisals for property owned by the Trump Organization in this filing cabinet?
There were appraisals that were done probably back in the early or late 1990s for golf courses.
Q Were there any more recent appraisals, to your

knowledge, in that filing cabinet?
I don't -- I don't recall.
Q But there could have been?
I just don't recall.
Q You don't recall one way or the other, sir?
Yeah. I just don't recall whether there were any or not.
Q t some point in time, did you become a trustee of the Donald J. Trump Revocable Trust?
Yes.
Q Was this in or about January of 2017?
Yes.
Q Could we please look at PX 769.
Sir, you've been shown what's been marked as PX 769. Do you recognize this document?
Yes.
Q What do you recognize it to be?
cceptance of the trustee becoming a trustee under the Donald J. Trump Revocable Trust.
Q On the first page, do you recognize Donald Trump, Jr.'s signature?
Yes.
MR. SOLOMON: Please turn to the next page.
Q On this page, do you recognize Eric F. Trump's signature?

Yes.
Q On this page, is that your signature?
Yes.
MR. SOLOMON: We offer PX 769 into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 769.)
Q Sir, did you resign as a trustee in or about January of 2021?
I don't recall the date. If you can show me something to refresh my memory, that would be helpful.
MR. SOLOMON: Put up PX 1016, please. Scroll down.
Q You will see there is a whereas clause; by removal of trustee executed prior to this appointment and acceptance of trustee, settle or removed llen Weisselberg as trustee under the agreement of trust.
MR. SOLOMON: Go back to the top.
Q This is dated January -- as of January -- I'm sorry. The last amendment was January 15, 2021. Do you see that?
Yes, I do.
Q Does that refresh your recollection that it was in or about January of 2021?
It does.
Q Does the trustee -- withdrawn.
Does the trust hold title to Mr. Trump's assets?

I'm not familiar with the -- with the way ownership of properties is handled. The legal department of the organization, they have all that information. I don't recall exactly the ownership structure.
Q So you are a trustee of the trust, but you don't know the legal ownership structure of the assets of the trust?
That's correct.
Q During your time as a trustee, what work, if any, did you do on behalf or for the benefit of the trust?
I continued my daily routine that I had all the years that I was the CFO. If there came a point in time where Eric Trump needed to discuss something with me or something he was thinking about, we would sit down and go over it, bounce some ideas back and forth; but other than that, my routine really hadn't changed.
Q So when you became -- is it your testimony, sir, that when you became a trustee, your routine, your daily routine hadn't really changed?
No, it hadn't really changed.
Q Do you currently work for the Trump Organization, sir?
I do not.
Q When did that employment relationship end?
s I mentioned before, so many things have happened over the last number of years with me and my family and it's taken its toll, I don't recall exact dates. If you have

something you can show me to refresh my memory again, that would be helpful.
Q Sure. I will in a moment, but I would like to know do you have an understanding as to why the employment relationship ended?
I assume when I was convicted of felony. I guess at that point.
Q What is the basis for your understanding that was the reason for the termination of your employment relationship?
I don't -- I don't have a basis for it.
Q Did you execute a severance agreement, sir?
I did.
MR. SOLOMON: Can we please mark for identification PX 01751.
Q Let me know when you have had an opportunity to review the document, sir.
(Witness reviewing document.)
MR. SOLOMON: Your Honor, while the witness is reviewing that document, we would move PX 1016 into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 1016.)
I am not going to read the entire document, but I'm familiar with the document.

Q Does that appear to be your severance agreement or separation agreement, sir?
Yes.
Q Can you turn to page 7 of 8, on the bottom, if you see the number?
Yes.
Q Is that your signature?
It is.
Q Did you sign it on or about January 9, 2023?
Yes.
Q Do you recognize the signature on behalf of the Trump Corporation?
I'm trying to figure it out. It looks like Eric's or Eric Trump.
MR. SOLOMON: Your Honor, the People offer PX 01751 in evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 01751.)
Q Mr. Weisselberg, if you perform your obligations under the separation agreement, how much money will you receive?
$2 million.
Q That's payable over two years, correct?
Correct.
Q Let's talk about Mr. Trump's triplex at Trump Tower.

re you familiar with that argument?
Yeah, I know of the apartment; sure.
Q It was one of the assets that was included in the Statement of Financial Condition as of June 11th. Excuse me, as of June 2011?
Yes.
Q nd it was on the Statement of Financial Condition as of June 2012, correct?
Yes.
Q In fact, the triplex is included in every Statement of Financial Condition between at least 2011 and your departure from the Trump Organization, correct?
I mean, I could ask to see a statement to look at it, but --
Q Is it your understanding that it is one of the assets reflected on the Statement of Financial Condition, sir?
Yes. Yes.
Q In 2012, the value of the triplex was determined by multiplying the number of the square feet of the apartment by a price per square foot; is that correct?
Correct.
Q In fact, multiplying the square footage by a price per square foot was how the value of the triplex was determined every year in the Statements of Financial Condition between June 2012 and June 2016, correct?

I'm not sure that's correct. I don't know whether it was some years either comps that we used without the -- there were times when it was not used as the method. I believe it may have been, and this is from memory, some years where there was a comp that we were able to use to valuate.
Q Wasn't the comps used to determine the square foot?
I don't recall that. That's a question Jeffrey McConney would have to answer. I don't have the work papers. If you would like to show me his work papers, I would be happy to look at it.
Q We will go through it.
In 2012, do you recall the size of the triplex was assumed to be 30,000 square feet?
I do not know the -- I don't walk around knowing the size of square footages of the apartments in the building including Mr. Trump's.
Q Sir, you do recall that there was an issue raised with respect to the size of the triplex, don't you?
I found it out later on, years later.
Q Years later. nd at some point in time, you knew that the number for the -- excuse me.
You knew that the square footage number that was assumed by the Trump Organization was wrong, didn't you?
In 2011?
Q No. I'm asking if you recall that the size of the

triplex, the assumption made by the Trump Organization in 2012 was wrong?
I -- when the report was completed, I did not go through every work paper of Jeffrey McConney and look at all his calculation.
Q Sir, that wasn't my question.
In 2012, an assumption was made as to the number of square feet for the triplex, right?
Jeffrey McConney had at his disposal.
Q The answer to my question is yes?
Yes.
Q t some point, you learned that the assumption was wrong?
Subsequently, that's correct.
Q In 2013, there was an assumption made as to the number of square feet of the triplex, correct?
Correct.
Q You subsequently learned that assumption was wrong?
Correct.
Q 2014, an assumption was made, correct?
Correct.
Q nd you learned that assumption was wrong?
Correct.
Q 2015, an assumption was made and you learned it was wrong?

Correct.
Q 2016, an assumption was made, correct?
I don't believe that in 2016 we used the same number. I think something -- I think we got a notification from Forbes looking into it and that at that point, we went back -- I had a young lady in our office actually check our -- excuse me. Do you want me to continue?
Q Please.
Okay. No, we had to check the offering plan to go back and check the amount of square footage that Mr. Trump owned and we came up with a number that was different and once we did that, we immediately changed the Statement of Financial Condition for the year 2016.
Q re you sure it was 2016 and not 2017?
I'm pretty sure it was 2016 that the change was made, yeah.
Q nd are you certain, sir, that this was done as soon as you looked back at the offering plan?
It was -- well, we were in the process -- when we prepared the June 30th statement, which started probably in July, at that point in time when -- when Jeffrey McConney was going through the assets -- if you had his work papers -- I don't have the benefit of those work papers. I'd like to see to confirm what I am saying is correct, but I believe at that point in time, he made -- he made a change to what the square footage

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should have been.
Q In fact, sir -- well, prior to making the change in the Statements of Financial Condition, you were put on notice that the 30,000-square foot number was wrong, weren't you?
I don't -- I don't recall that.
Q Let's look at, please, PX 0632.
t the moment, I'm just going to ask you to focus on the cover e-mail, not the attachments to this. Who is -- for the record, this is Sharon -- from Sharon Hwang on February 2, 2012 at 6:44 p.m. It is to several people at DL Piper with cc's to Jack Weisselberg. That's your son, correct?
Correct.
Q He was at Ladder Capital at the time?
Correct.
Q nd to you, the Trump Organization, correct?
Correct.
Q nd Jason Greenblatt at the Trump Organization?
Correct.
Q nd Bradley Cox at the Trump Organization?
Correct.
Q nd the subject is Trump Tower organizational documents, structure chart and contact list. Do you see that?
Correct.
Q Did you receive this e-mail on or about February 2, 2012?

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I recall receiving the cover e-mail. I don't recall seeing any attachments with it since they were already -- these documents were already in our office. So there would be no need to send all the attachments to go with it.
Q Let's look at the next document. Withdrawn.
Just so we can set the stage here, at this point in time, the Trump Organization was in discussions with Ladder Capital about potential loan for Trump Tower?
Refinancing, yes.
Q It would be secured by Trump Tower? The Trump Organization's assets at Trump Tower, correct?
The asset -- when you say Trump Tower, are you referring to the commercial side, not the residential side?
Q Either.
The residential side would not be part of the collateral, no.
Q It would only be the commercial side?
Correct.
Q But in order to make a determination, Ladder Capital wanted information, due diligence as they say the parlance, correct?
They wanted that information to understand the deprivation of how the residential and commercial sides of the building operated.
MR. SOLOMON: Let's pull up -- withdrawn. The

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people offer PX 0632 in evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 0632.)
MR. SOLOMON: Will you, please, pull up PX 0633.
Q We marked as PX 0633 another e-mail from Ms. Hwang to the same group of people. Is that right, sir? Do you see that?
I do.
Q It is also on February 2nd?
Yes.
Q This is at 6:47 p.m., about three minutes after the first one, right?
Correct.
Q nd she writes, and I'm reading from her e-mail, " s indicated in the previous e-mail, attached please find a Trump Tower Condominium declaration amendments 1-13." Do you see that?
I do.
Q Did you receive this email February 2, 2012?
I received a cover e-mail. I don't recall receiving any attachments with it since all of those attachments, again, is -- were already part and parcel of our offering plan and was sitting in our office.
Q In fact, sir, you previously testified that you didn't believe you received it because all those documents were in the

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office all the time, what would I do with them, I have no need for them. Does that sound about right?
Meaning they were already in the office.
Q Right.
I wouldn't need to get them a second time. They were already there.
Q Let's look at one of the documents attached to this, shall we, one of the documents you said you didn't need.
Because -- again, because they were already in our office.
THE COURT: Off the record for a moment.
(Whereupon, a discussion was held off the record.)
Q Mr. Weisselberg, let's assume that your prior testimony under oath, your testimony today here was accurate that you had these attachments in your office, okay. Let's look at one specifically. It is also one that you were shown in your prior testimony. Page 13 of the exhibit, please. This document is titled "First mendment to the Declaration of Trump Tower Condominium". Do you see that?
Yes.
Q That's a document you had in your office, right?
Not in my office, in the office generally.
Q You had access to it, though, if you wanted it?
If I needed to go to it for some purpose, I would do that.

Q Do you see there is a stamp on the top right, Reel 2159 PG333. Do you see that?
Yes.
Q You've been in New York you told us for approximately 50 years. Do you know what that stamp means?
That it has been recorded someplace.
Q Right. Reel and page, does that sound familiar, sir?
I don't know what this really means.
Q But you understand that it is being recorded someplace?
Yes.
Q nd that it is publicly available, right?
Okay.
Q We established this was in the Trump Organization's offices and it was publicly available.
MR. SOLOMON: Scroll down, please.
Q Under "unit designation," see that on the left?
Yes.
Q Unit designation. Then there is tax number. Do you see that?
Yes.
Q nd then there is a column "approx" for the approximate area in square feet. Do you see that?
Yes.
Q 10,996.39, do you see that, sir?
Correct.

Q nd that happens to be the exact number of the square footage of Mr. Trump's triplex, right?
Okay. Well, based on what you're showing me, yes.
Q So in the document you testified had been "in the office all the time," since at least prior to February 2012, right?
Yes.
Q The square footage is disclosed as 10996.39 square feet?
Yes.
Q It is your testimony -- withdrawn.
MR. SOLOMON: Can we go to page 15 of the exhibit. That's the first amendment. Scroll down, please. Okay. Right there.
Q Do you see that this was executed October 11, 1994 by the residential board of Trump Tower Condominium, right?
Correct.
Q Let's look at the consent now, the 20th page of this exhibit.
MR. SOLOMON: Scroll down.
Q There is a consent to the first declaration. Do you see that document in front of you, sir? You can take a look at the 20th page of the exhibit.
Yes.
Q Do you recognize the signature?

Donald J. Trump.
Q That was executed in or about October of 1994, correct?
Right.
Q So as far as back as October 1, 1994, Mr. Trump executed a consent to the first amendment to the declaration of the condominium that reflected the triplex was 10996.39 square feet, correct?
Correct.
Q Notwithstanding the fact that this goes back to 1994, you are aware, sir, that in 2012, 2013, 2014, the triplex is identified as 30,000 square feet on the Statements of Financial Condition, right?
No. That's where I was trying to explain before. These -- the triplex was part of the other assets of Mr. Trump's including other things that he owned, airplane, whatever, and they were all lumped together in one number. I never focused on that number when renewing Mr. McConney's draft or the Mazars draft of the financial statement. I wasn't aware at that time of the -- I didn't go through the details of that apartment. I was looking at -- what I was looking at is Statement of Financial Condition. There were much, much larger items on there that I was more concerned about, things like commercial buildings or golf courses and things of that nature that I was focused on.
The apartment itself, relatively speaking when you look

at the value of that apartment relative to his net worth is non-material. It is not a material adverse type change. The number of 200 million or whatever difference may have been in dollars, that in and itself is a large number; but when you compare it to the net worth of the statement itself, 6 billion, it is less than one percent or about one percent.
We were always taught -- our accounting firm always told us if it is less than five percent, five percent or less, that's considered non-material. So I didn't have a reason to focus on this apartment at that time.
(Continued on the next page.)

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EX MIN TION BY
MR. SOLOMON:
Q There was several parts to that answer, sir. Respectfully, I don't think any of them answered my question, which was the Statements of Financial Condition contained inaccurate square footage for the triplex in 2012, 2013, 2014 and 2015; right? I'm not asking if you knew it. I'm not asking what you did to confirm it. Yes or no, was it inaccurate in those years?
I'll say it again. Without seeing -- without being argumentative, without seeing the work papers as part of our assets, I won't say yes or no. If you'd like to show me the work papers of Mr. McConney, I'll be happy to respond.
Q Okay. We will get to the work papers later in the testimony and we will go back over those, but in your answer you gave a couple of points to be made.
nything -- according to what you understood, anything less than five percent wasn't material?
ccording to our accounting firms that we spoke with, they always felt that five percent was the number that we can use -- that should be utilized to determine materiality.
Q nd is it fair to say anything over five percent would be material?
I would think so.
Q You mentioned the apartment was one percent on a

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$6 billion net worth?
In the year that we made the change.
Q re you saying one percent was the change or one percent was the value of the apartment?
Change.
Q Do you recall what the change was?
I don't recall.
Q We'll get to that when we get to the SOFCs and the backup data.
Do you recall in ugust and September of 2016 a reporter from Forbes reached out to you directly for comment about Mr. Trump's net worth?
I don't recall.
Q Let's mark PX -- withdrawn.
MR. SOLOMON: Before I do that, Your Honor, we move PX 0063 into evidence.
THE COURT: Granted. It's in evidence.
MR. SOLOMON: Can we please mark PX 1280 for identification?
Q Please take a moment, sir. These are a number of e-mails with Luisa Kroll, who appears to be at Forbes.
nd as you note in the e-mails the last page is the oldest e-mail and it works its way more recent. You may want to look at it in that direction.
Okay.

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Q Okay. Do you recognize the series of e-mail chain that you had with Luisa Kroll in or about ugust and September of --
I recall it vaguely. If I see it, yes.
Q nd that's your e-mail address at the Trump Organization?
I'm sorry?
Q That's your e-mail address at the Trump Organization?
Yes.
MR. SOLOMON: We move this into evidence.
THE COURT: Granted. It's in evidence.
Q Let's turn to page four of eight of the exhibit, Issue Number 6. Do you see Ms. Kroll is raising a question about who actually owns certain units at Trump Tower? Do you see that?
I do.
Q Sir, did you do anything in response to Ms. Kroll's question or Issue Number Six?
I don't recall.
Q Did you contact in-house counsel at the Trump Organization?
I don't recall.
Q Did you direct anyone to look into this issue?
I think at this point in time I don't recall.
Q If you scroll up on the e-mail chain you'll see that you did respond to certain other issues; right?
Sir, you can look at the document in front of you?

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Do you see she responds "thanks for getting back to me?"
Yes, I do recall I may have asked her about -- it may have been a million things. t one point she was discussing -- I don't recall. I don't recall what it was specifically that I got back to her with.
Q But you got back to her on other issues?
On some things. I don't know what they were again.
Q So someone from Forbes reaches out to you, questions whether your boss, Donald J. Trump, actually owns the units in the condo he claims to own and it's your testimony you don't remember what, if anything, you did?
t this point in time I don't recall.
Q Do you recall in February 2017 another reporter from Forbes reaching out to you directly for comment about Mr. Trump's net worth?
Reporters from Forbes contacted us every year in doing their list. It reached a point in time where we would -- when I say "we," I'm talking about myself, at one point and then Jeff McConney would take it over and then when Patrick Birney, he took it over and they would have a list of all of our assets and the value they placed on him and we spent inordinate amount of time going back and forth with them and it got to a point in time where Forbes would listen and never make any changes. They would periodically early on. Then that stopped and at this

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point I stopped talking to them. I felt it was no need to because no matter what we told them and showed them evidence of things they would just ignore it and I just stopped speaking with them.

MR. SOLOMON: Let's mark PX 1324 for identification, please.

Q Sir, does this appear to be an e-mail from Dan lexander at Forbes to you and Jeff McConney at the Trump Organization from February 2017?

Yes.

MR. SOLOMON: We offer PX 1324 in evidence.

THE COURT: Granted. It's in evidence.

Q Sir, if you look at the second page of this e-mail, Number 11?

Yes.

Q Trump Tower penthouse. That's the triplex; right?

Yes.

Q nd this reporter from Forbes in February of 2017 is telling you he believes it's only 10,996 square feet; right?

It was in his e-mail. This e-mail was probably dealt with by Jeff McConney, but I wouldn't speak to Forbes at that point, so, yes, I do see the reference to the 10,996.

Q nd you're a recipient of this e-mail; correct?

Correct.

Q Did you reach out to Mr. lexander to tell him the

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10,996 square foot number was inaccurate?

s I indicated before I stopped speaking with the folks from Forbes.

Q Did you direct Jeff McConney to reach out to Forbes and tell them their number was inaccurate?

I don't recall.

Q Do you know if Mr. McConney ever reached out to Forbes to tell them their number was inaccurate?

I don't know.

Q So although you believed, sir, that Forbes was wrong on an objective fact in connection with Mr. Trump's net worth; namely, the square footage of his triplex, you don't recall if you did anything to confirm who was right?

s I said before --

Q It's a yes-or-no question, sir. You don't recall if you did anything to confirm who was right?

I didn't personally.

Q nd you don't recall if you directed him not to; correct?

I don't recall. I may have. I don't recall.

Q s you sit here today, you have no idea if you did anything or directed anyone; right?

MS. H BB : Objection. sked and answered. Please move on.

THE COURT: Well, I'm going to tell the witness --

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direct the witness, as I do with many witnesses, if there is a yes-or-no question and you can answer it yes or no, answer it yes or no; if you can't, you can try to explain why not. You can say "I can" and we'll ask you why not -- the attorney may ask you why not.

I think there was so much back and forth there that it was hard to know. So why don't we do it from scratch right now. You can just ask that one question and if you can answer yes or no, listen carefully, answer it yes or no.

Q s you sit here today, you don't recall if you did anything or directed anyone to do anything in connection with correcting Forbes as to the square footage of the apartment in or about February of 2017; is that correct?

What I did -- are you looking for a yes-or-no answer?

THE COURT: Yes.

Q Sir, either you recall or you don't.

I don't recall.

Q Okay. Sir, is that because by this time, February of 2017, you knew the triplex was only 10,996 square feet?

I don't recall that. I never focused on the triplex, to be honest with you. s I said before, my testimony -- I look at the bigger numbers on Jeff's spreadsheets -- Jeff McConney's spreadsheets. I won't focused on Donald's triplex at that time or -- it was part of other assets. It was almost de minimis relative to his net worth, so I didn't really focus on it.

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Q My question wasn't whether you focused on it, my question wasn't whether it was relevant size-wise to anything else. My question was very simple: Did you fail to respond to Forbes in February of 2017 because by that point in time you knew the triplex was only 10,996 square feet; yes or no?

I did not respond to Forbes. Jeff McConney was --

MS. H BB : Your Honor, I'm sorry. I'm going to object again. sked and answered with a yes or no.

MR. SOLOMON: Your Honor, with all due respect, this witness has not answered that question. The reason why -- I'm not asking what he did or didn't do at this point. I'm asking the reason why was whether or not it was because he knew at that point in time. It's a simple yes or no.

THE COURT: Yes or no? You either know or you didn't know; right? Is that --

MR. SOLOMON: Right.

I don't remember. I don't remember it back in 2017 what took place. I did not respond to this.

MS. H BB : Your Honor, he doesn't remember. We can't force him to do yes or no. I think that's clear. Can we just move on? He's made the same answer, the same question asked seven different ways. He doesn't remember.

THE COURT: Counselor, can we --

MR. SOLOMON: Your Honor, I'll move on, but I'll just note for the record they are different questions. One

is what he did, what he directed someone to do and why. Those are all different questions, respectfully, but I will move on.

THE COURT: Before you do, there was a famous -- semi-famous Colombian philosopher named Sidney Morgenbesser. One day a student asked him, "Professor Morgenbesser, can a statement be true and false at the same time?" nd his answer was "yes and no." Let's move on.

Q Sir, with respect to the communications from Forbes that we were just looking at in 2016, 2017, did you ever go back and check the first amendment to the condo dec that was in your offices?

I never did, no.

Q Did it ever cross your mind to do that?

No.

Q Did you ever discuss that with anyone?

gain, again --

THE COURT: Did you ever discuss it with him? That should be a yes or no.

THE WITNESS: No.

MR. SOLOMON: Can we please look at PX 1345 for identification?

Q 1345 is an e-mail chain. Do you see that?

I do.

Q nd if you'll see the latest was from manda Miller to

lan Gartner, -l-a-n, at the Trump Org and Matthew Hilson at the Trump Org. Do you see that?

Yes, I do.

Q Who is Ms. Miller?

She worked in our office dealing with press inquiries, things of that nature.

Q If you take a look and go further down the chain from the beginning of the third page of this exhibit, Mr. Kirsch identifies himself as a reporter from Forbes. Do you see that?

Yes.

Q nd then if you go further up, Mr. Hirsch has certain questions?

Yes.

Q nd on page four, one of those questions again relates to the Trump Tower penthouse; right, page four?

Yes, I see it.

Q nd now he specifically refers to the "1994 mended Condo Declaration." Do you see that?

Yes.

Q Dated October 11, 1994.

Do you see that third line of number one?

Yes. You're referring to a portions of --

Q Sure. Trump Tower penthouse. Do you see that, sir?

Yes.

Q Second to third line, "October 11, 1994?"

Yes.

Q nd he asks if that is accurate and up to date.

Do you see that?

Yes.

Q nd he tells you -- he tells the Trump Organization -- excuse me -- in this e-mail that it shows President Trump's apartment is 10,996.39 square feet, that same number we saw earlier in the dec; right?

Correct.

Q Did there come a time that you had a conversation with manda Miller about how to respond to the report from Forbes?

I -- no. I think at that point I may have had a brief conversation regarding Trump Tower as a commercial which he reiterated to me she asked about Trump World Tower and Trump Tower. I was working at Trump Tower in a commercial part of the building which is a big asset that we focussed on and Trump World Tower we only had one apartment that we owned in that building at that point and I think a small shopping area and a garage, so there was nothing really for me to even discuss with her. I said just leave it alone then. Trump Tower is fine and Trump World Tower is fine. I wasn't focused on this e-mail behind it. I'm not even sure I remember seeing it, to be honest.

Q So, sir, just so I understand, is it your testimony that you recall having a conversation with manda Miller about

Trump Tower?

Trump Tower -- again, looking at it from the commercial side of it --

THE COURT: gain, it's a yes-or-no question. Did you have a discussion with --

THE WITNESS: Yes.

THE COURT: Okay.

Q nd is it your testimony that in that discussion the issue of your boss's apartment never came up?

With manda Miller, I don't recall that -- discussing that with her. I don't recall.

Q nd you don't recall whether you told her, manda Miller, to leave it alone with respect to the size of the apartment?

gain, I -- when I talked to manda Miller, my thinking of Trump Tower was always about the commercial side of the building. I never focused on the apartment Mr. Trump owned, even though it was on the list of many other things, including Puerto Rico and Toronto and Panama. There are many, many pages here. s I said before, we began -- we sort of stopped dealing with Forbes, so I wasn't going to read the entire e-mail.

Q Well, you actually didn't stop dealing with Forbes at that point in time because you spoke to manda Miller about it before I said it; right?

I didn't get the request. manda Miller got the

request.
Q So you were in fact responding to manda Miller about Forbes; right?
bout Forbes and about Trump Tower. gain, I --
Q Okay. nd Trump Tower is one of the items the reporter rates; right?
Correct.
Q Specifically Trump Tower penthouse, that's the -- that is text across the top; right?
That's what the text is.
Q Right. nd then this reporter lists ten different questions about Trump Tower; right?
Yes.
Q nd you don't recall whether you bothered talking to manda Miller about a response because you only focused on the commercial portion of Trump Tower; is that right?
Commercial portion and I didn't correlate the square footage of Donald's apartment. I never focused on it. It was always in my mind a de minimis asset of the overall of Donald J. Trump's Statement of Financial Condition. That was never a concern of mine. I never even thought about the apartment. It was de minimis in my mind.
Q Didn't you certify to Mazars every year that the information that the Trump Organization provided to them for every year between 2011 and 2020, that the information of the

Trump Organization provided to them was fairly presented? It's a yes or no.
Yes.
Q nd that it was accurate?
Yes.
Q nd that the Trump Organization was responsible for the information it provided to Mazars that went into the compilation; right?
Yes.
Q Every year?
Yes, without seeing all the -- without seeing all the engagement letters and so on, yes.
MR. SOLOMON: Can we pull up the Jeff Supporting Data for the 2016 SOFC? I believe that's PX 0742. It's already in evidence, Your Honor.
nd Your Honor, we would move PX 1345 in evidence.
THE COURT: Granted. It's in evidence.
Q Sir, we've put up the Jeff Supporting. That's been identified previously, the JSD, Jeff Supporting Data, the 2016 Statement of Financial Condition.
Is this what you were referring to earlier when you said Jeff McConney took care of all the backup information?
Right.
Q It's your understanding Mr. McConney prepared this?
Yes.

Q But then the information from this was given to Mazars; right?
Yes.
Q nd you reviewed it before it went to Mazars; right?
No, I did not review every line of 3,300 pages of supporting documentation.
Q Did you review the totals that were given to Mazars with respect to the assets?
I reviewed the totals, for example, of all the other assets. I may have. I did not review individual line items that comprised that. So there could have been situations where some assets went up or some assets went down and the net effect of all that could have been an up or down in the total of other assets. So I did not look -- as you can see from the document there are many lines here in probably the last item shown on the Statement of Financial Condition -- probably the last item. I don't recall from memory. nd it was not something that was that important to me in looking at a $6 billion or $5 billion net worth when I see 327 -- again, not a small number, I understand that, but again, using the de minimis and --
Q Let's do your de minimis test, shall we?
6 billion. Let's assume 6 billion, that's the number. What's five percent of that?
6 billion?
Q Yes.

300 million.
Q How much?
Excuse me. That's the full value and that's the difference between --
Q I understand, sir.
-- the 11,000 square feet and the 30,000.
Q My question was different, though.
This asset comprises -- you just did the math, $6 billion. 300 million is five percent. This asset is identified on line 913 as $327 million; right?
But that wasn't the question you asked earlier. You asked about --
Q I'm asking that question now.
The question you asked earlier was 30,000 square feet versus 11,000 square feet and that differential times the developer square foot is the number that we looked at as being below the five percent.
Q I understand.
Okay.
Q This number, however, isn't below the five percent, is it, 327 million? It's simple math. You just told me 300 million is five percent --
I don't have the exact number of 6 billion, six billion nine or six billion eight. I don't know if that worked out to five percent.

Q That wasn't the number you gave me earlier, sir. You said 6 billion.
I used a round number without having to --
MS. H BB : Your Honor --
THE COURT: Overruled.
Q Can we agree that if it's 6 billion, 327 million is more than five percent? It's a yes-or-no question. Can we agree? It's math.
I cannot agree to anything. I'd have to see the actual Statements of Financial Condition and see if it's five percent or not.
Q That wasn't my question.
THE COURT: You're not answering his question. You are -- I won't try to categorize it, but it's a simple question. Is 327 million more than five percent of 6 billion; right? Is that the question?
MR. SOLOMON: Yes, Your Honor.
THE WITNESS: Your Honor, that's a simple answer.
THE COURT: Then give us the answer.
The answer to that is yes.
Q Thank you, sir.
You had to sign a management representation letter for Mazars each year before they would issue the SOFC; right?
You mean a representation letter?
Q Is that how you refer to it, a rep letter?

Yes.
Q Okay. We'll use your terminology.
Did you sign to your recollection a rep letter for the 2016 SOFC?
I don't recall.
Q We'll pull it up and take a look at it.
MR. SOLOMON: Let me look at, please, PX 00754, which I believe is already in evidence Your, Honor.
I'm sorry. That's the wrong document. I'm sorry, sir. I had the wrong number. I couldn't read my own handwriting.
Q We put up PX 741, a letter on Trump Organization letterhead, dated March 10, 2017 to Mazars. Do you see that?
Yes.
Q Go to the last page. Is that your signature?
Yes.
Q Do you recall the communications with Ms. Miller were in early March 2017, March 6, 2017; right?
Yes, I think that was the date, yes.
Q Okay. Four days after the issue of the size of the penthouse was brought to the attention of the Trump Organization and there was a response from Ms. Miller that llen W., referring to you, said "leave it alone."
You signed this rep letter; right?
We never correlated that as being a major or a material

change to the numbers of Mr. Trump's financial statement. I never correlated the letter, the rep letter, to the Forbes. We were looking into it, who wanted to go back and check to see whether or not the actual number was correct.
So I had the young lady in my office go back and check all the offering plan. We didn't do it immediately. It wasn't that vital, that large of a number, the difference between the 10,996 and 30,000. So we gave it sometime to go back and check it. This was a day or two later or four days later. We may have done it a week later or seven days later or eight days later. We didn't jump on it immediately.
THE COURT: Can you read back the question?
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
THE COURT: So the question is whether you signed the letter. Mr. Weisselberg, we all have our own -- Mr. Solomon's role is to ask questions; your role is to answer the questions, not to give speeches or explanations.
THE WITNESS: Okay.
THE COURT: Your -- there are other people here who might be able to delve into that deeper, but, please, just answer the questions.
Did you sign this?
THE WITNESS: Yes.
THE COURT: Thank you.

Q Now, as we saw on the Jeff Supporting Data, the penthouse was still being listed at 30,000 square feet; right? The Excel spreadsheet we just saw?
Yes.
Q s it turns out we know that Forbes was actually right about the square footage; right?
Correct.
Q You didn't do anything to check who was right -- to check who was right before providing a rep letter, did you?
I did not. What typically would happen is rep letters -- well, if you -- these would go to Jeff McConney. He'd review them for me, bring it into my office and ask me to sign it, then I would sign it.
THE COURT: I forgot to bring up. My role is to make sure that the questions are proper and the answers answer the question. You did not answer the question.
THE WITNESS: Okay.
THE COURT: nd please don't make speeches. Just answer the question.
THE WITNESS: Okay.
THE COURT: Mr. Solomon, do you want a read back, do you want to ask it again?
Q You didn't do anything to check who was accurate, the Trump Organization or Forbes, before signing the rep letter; right?

Correct.
Q s it turned out Forbes was right. The triplex is only 10,996 square feet; right?
That's correct.
Q Number 14, sir.
"No events have occurred subsequent to the date of the Statement of Financial Condition and through the date of this letter that would require adjustments to or disclosure in the personal financial statement."
The date of the statement is June 30, 2016; right?
The statement.
Q The date of the Statements of Financial Condition is June 30, 2016; right?
Correct.
Q Subsequent to that we've seen in September of '16 Forbes raised questions about the triplex; right? We have seen in March of 2017 four days before you signed this there are questions about the size of the penthouse, the triplex; right?
Correct.
Q Yet you were comfortable certifying that nothing occurred subsequent to the date of the statement that would require adjustment; right? It's a yes-or-no question, sir.
You were comfortable certifying that to Mazars to induce them to issue the SOFC; right?
Yes.

Whereupon, the proceedings continue on the following page....

Q Now, sir, did there come a time that the two sides of the penthouse became a very public matter?
Public matter? Can you -- can you just --
Q Sure. Do you recall in May of 2017 Forbes published an article that Mr. Trump had been misrepresenting the size of his triplex?
I think, yes. nd I think that's when we began to do our investigation as to, you know, what the number really was at that point.
Q Okay. So you didn't do it when the issue was raised --
THE COURT: Let's take our ten minutes break. See you back at 11:30 and hopefully the feed will be fixed.
THE COURT OFFICER: Sir, step down.
(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
THE COURT: Everything is fixed, so we can just get back to business.
Please proceed, Counselor.
Q Mr. Weisselberg, before the break, we were starting to talk about an article in Forbes Magazine from May of 2017. Do you recall that?
Yes.
Q nd in fact, the title of this article is "Donald Trump Has Been Lying bout The Size Of His Penthouse." Do you recall

that?
I recall it, yes.
MR. SOLOMON: I would like to mark this as Plaintiff's Exhibit 1605 for identification.
Q Do you recall the article, sir?
I never read the article, but I do recognize it.
MR. SOLOMON: Your Honor, we offer this in evidence for notice, not necessarily for the truth of the matter as asserted therein.
THE COURT: Granted. It is in evidence solely for notice, not for the truth of its contents.
(Whereupon, the Document was marked in evidence as People's Exhibit 1605.)
Q Mr. Weisselberg, it was only after this article was published and the information became public that the Trump Organization corrected the square footage for Mr. Trump's triplex, right?
That's correct.
Q Let's turn to, sir, we were talking about the engagement letters and the rep letters earlier. Do you recall that?
Yes.
MR. SOLOMON: If we could pull up PX 785 which I believe is in evidence already.
Q Mr. Weisselberg, PX 785 has been put in front of you.

I'm sorry.
Q PX 785 has been put in front of you. Have you had a chance to look at that?
Okay.
Q Is this an engagement letter from WeiserMazars to the Trump Organization?
Yes.
Q Is that your signature on the fifth page of the document?
Yes.
Q Is it your normal practice to only sign a document after you've read it, right?
I sign a document after others have read it and tell me it's okay to sign.
Q So from time to time, you rely on others when you sign your name to a document binding the Trump Organization to certain commitments?
No, I rely upon Jeffrey McConney who has been through this before and when he tells me he's read it carefully and has gone through it and I sign it at that time.
Q Would you have signed this if you didn't understand it?
If I didn't under -- probably not.
Q So we can assume if you signed it, you understood what was in the document, right?
Yes.

Q Let's turn to the terms of the document. Did you understand that pursuant to this agreement, WeiserMazars was going to provide a compilation of a Statement of Financial Condition of Donald J. Trump as of June 30, 2011?
Okay.
Q Did you understand that?
Yes. Yes.
Q If you look at the fifth paragraph on the first page, did you understand that this was describing certain of the differences between a compilation, an audit and a review?
Yes.
Q You understood, sir, didn't you, that a compilation as compared to a review or an audit was the lowest level of independent confirmation by the outside accountants of the information provided by the Trump Organization, right?
That's correct.
Q Do you know who made the decision to have only a compilation instead of a review or audit done for the 2011 Statement of Financial Condition?
I don't.
Q Do you know who made the decision to have only a compilation done for any of the statements of financial condition of Donald J. Trump instead of a review or an audit?
I don't.
Q We'll come back later to how the Statement of Financial

Condition itself is prepared, but once that's done, can we please look at PX 786 which I believe is already in evidence. This is a letter dated October 6, 2011 from you to WeiserMazars, correct?
Yes.
Q On the second page, that's your signature?
On the back, yeah.
Q Is this what we were referring to -- you were referring to earlier as a rep letter or representation letter?
Yes.
Q So by this letter, it is your understanding the Trump Organization was making certain representations to WeiserMazars, right?
Correct.
Q Did you understand that WeiserMazars was relying on those representations in issuing the June 30, 2011 Statement of Financial Condition?
Yes.
Q You also understood, sir, didn't you, that WeiserMazars would not have issued the June 30, 2011 Statement of Financial Condition without this rep letter, right?
Correct.
Q Let's look at the substance of this. In the first two paragraphs, you use the word "we." You see that?
Yes.

Q Do you intend by using "we" to refer to the Trump Organization?
Yes.
Q If you look at the fourth paragraph down, the data presented in the statement was provided to you by members of Mr. Trump's accounting department. Is that an accurate statement?
Yes.
Q nd it goes on and you, referring to WeiserMazars, have compiled that information in an appropriate manner when preparing the statement. Was that an accurate statement?
Correct.
Q Next paragraph continues, the statement referred to above is fairly presented in conformity with accounting principles generally accepted in the United States of merica. Do you see that?
Yes.
Q Is that reference to G P?
Yes.
Q You told us earlier you were not familiar with the components of G P, didn't you?
Correct.
Q Yet, you are comfortable making a representation to the accountant to induce them to issue the Statement of Financial Condition that the information complied with G P; is that right? It is a yes or no question, sir.

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There are some questions that are not black and white.
Q Okay. Let's break it down then. You didn't know G P, right?
Correct.
Q You represented that the Statement of Financial Condition, the statement was presented in conformity with G P, right, yes or no, your representation right here we just read?
gain, it requires an explanation; but if the answer is being forced to give a yes or no, I will be happy to do that.
THE COURT: I don't think it requires an explanation.
We relied --
Q What's in black and white in front of you, is that a representation that the statement referred to you is presented in conformity with G P; yes or no?
Yes.
Q You didn't know G P. You made the representation and at that time you were comfortable making that representation to induce the accountants to issue the Statement of Financial Condition, right?
Yes.
Q In fact, you did that for every year until you left the Trump Organization, right?
Yes.
Q You continue on, all assets are presented at their

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estimated current values and all liabilities were presented at their estimated current amounts which have been determined in accordance with guidelines promulgated by the merican Institute of Certified Public ccountants except to the extent noted in the accountant's compilation report which was annexed to the statement.
You made that representation to Mazars as well, right?
The organization, yes.
Q You on behalf of the organization?
Yes.
Q You use the term "we"?
Yes.
Q merican Institute of Certified Public ccountants, you understand that's referred to as ICP ?
Yes.
Q You heard that?
I heard that, yes.
Q re you aware if there are any publication, guideline or glossary that defines estimated current value?
I'm not aware of that. I do know there are differences between a G P statement for a personal -- one's personal financial statement versus a large corporation's statement. There are differences between the two on how to present it.
Q So let's talk about the SC 274-10 which relates to the personal financial statements.

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Can we, please, pull up PX 2757.
You mentioned you are familiar with the difference between -- well, was it your testimony that you understood there is a difference between personal and corporate financial statements?
Yes.
Q If you take a look under "General 274-10-05," basis of presentation of personal financial statements, is that what you were referring to, sir?
There's more to it than just these two pages.
Q Understood, but this is the section that covers it, right?
Yes.
Q You will see that first sentence, "The primary focus of personal financial statements is a person's assets and liabilities and the primary user of personal financial statements normally consider estimated current value information to be more relevant for their decision than historical cost information." Do you see that?
Yes.
Q Do you understand that there is a definition that is used for estimated current value and glossary?
I see it now, yes.
Q No. No. This refers to estimated current value. My question is a little different. I apologize if it wasn't clear.

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Uses the term "estimated current value." Do you know what that term means?
No.
Q Have you ever heard it referred to as "for an asset, the amount at which an item could be exchanged between a buyer and seller, each of whom is well-informed and willing and neither of whom is compelled to buy or sell"?
Okay.
Q re you familiar with that definition?
I am now that you mention it.
Q Had you ever heard it before today?
I don't recall.
Q Sir, you refer in your rep letter to estimated current value.
Okay.
Q nd you told me you knew there was a difference between personal financial statements and those for corporations, right?
Correct.
Q Did you use a different definition for estimated current value in your representation letter?
I think -- I don't recall exactly what we thought at the time, but there are many, many ways of valuing assets that might fall under the category of estimated current value if that's your question.
Q That wasn't my question, but --

If you would like to repeat it --
Q Let's see if we can parse that down, though.
You have estimated current value, right?
Correct.
Q nd it is your testimony that there are many ways to get to it. I can come at it from the left, the middle, the center, many different ways to get to it, right?
Correct.
Q But at some point, I have to get to estimated current value, right?
Correct.
Q nd that's what you represented in the letter to Mazars to induce them to issue the Statement of Financial Condition was how you value the assets, correct?
Correct.
Q nd you don't know if you used the definition that I just read to you, right?
Correct.
Q Did you, sir, in connection with the 2011 Statement of Financial Condition do any independent work to determine whether the values reflected for the assets were presented at their estimated current value except where noted?
Did you say did I?
Q Did you?
No.

Q So you made a representation to Mazars to induce them to issue the Statement of Financial Condition without doing any independent work, right?
gain, I relied on others to do that for me, but I did not personally.
Q Do you still have that letter in front of you, sir?
No. Yes.
Q The management rep letter, 786.
I have it.
Q You have it in front of you?
Yes.
Q Can you point out where in that letter you told Mazars that you were relying on others for your representation to that?
Where we say Trump Organization, that encompasses a group.
Q So now you have the entirety of the Trump Organization doing the work --
Not the -- I'm sorry. You want to finish --
Q Please.
I am not saying the entire organization including secretarial staff. I'm not saying the entire organization was involved in the preparation of these numbers, but there were people within the Trump Organization that were involved in getting those numbers.
Q nd you took the information they provided and then you

represented to Mazars --
Or third parties were utilized to get information that then our in-house folks would then take and prepare -- be able to arrive at a valuation.
Q You told me a second ago that "I'm referring to the people at the Trump Organization." It is now larger?
It grows. It grows.
Q t the Trump Organization, you relied on Mr. McConney, right?
That's correct.
Q t some point in time, you relied on Mr. Birney?
That's correct.
Q Did you rely on Eric Trump?
No.
Q Not at all for any of the information contained in the Statements of Financial Condition?
Not me personally, no.
Q Do you know if anyone else relied on him up the chain to give you information?
It's possible. I just don't recall.
Q Donald J. Trump, Jr.?
I don't recall.
Q Donald Trump?
Not that I can recall.
Q Who do you recall beyond those people that I just

identified that provided information either directly to you or up the chain that you used and relied upon in making the representation to Mazars?
So -- I think it might be a good idea to go through a little bit of the process of how we got to the Statement of Financial Condition.
Q We'll get there later, but if you want to sort of give me highlights now, please feel free.
I think it might be helpful.
Q Please.
So Jeffrey McConney used Patrick Birney to work with and then others in the accounting department would get pieces of or numbers that were necessary to go on to the statement, cash balances, mortgage balances. So others besides Patrick Birney, Jeffrey McConney would get those numbers for him. Once all that data was put together, then the work can first begin to assemble the statement. Hope that clarifies something. Does that clarify for you the process?
Q I understand the process, sir. Thank you.
Okay.
Q Let's assume for a moment that you've given all the information to WeiserMazars also known as Mazars at one point in time, just a name change, right?
Yes.
Q ssume for the moment, say, 2016 we looked at a little

earlier before the break.
Okay.
Q That you had information in your files that contradicted information provided to Mazars in connection with compilation. I'm not asking whether you actually relied on that information, but assume you had it in your files. Can you do that?
I don't -- I didn't maintain files.
Q The Trump Organization had it in its files.
Yes.
Q Fair enough?
Yes.
Q nd again, I want to be clear, not whether you relied upon it, but it was in the files and it contradicted information. Say, for example, you had a first amendment to the condo dec that contradicted information that was provided to Mazars, okay.
Correct.
Q Do you believe you were obligated to advise Mazars of the existence of this contradictory information?
s long as the people --
Q It is a yes or no question, sir.
The answer is yes.
MR. SOLOMON: Can we, please, pull up PX 740 which is in evidence.

Your Honor, I am cognizant of your admonition not to go through each one, one by one, but where there are changes between one year and another, I would like to spend a few minutes discussing that.
THE COURT: Sure.
MR. SOLOMON: Okay.
Q Sir, it has been put in front of you and it is up on the board. PX 740, does that appear to be the engagement letter between Mazars and the Trump Organization dated January 21, 2017?
Correct.
Q Is that for the Statement of Financial Condition for the year ending June 30, 2016?
Correct.
Q Could you, please, turn to the fifth page of the document. Is that your signature, sir?
Yes.
Q In addition to signing as an executive vice-president and chief financial officer of the Trump Organization, you also sign as the trustee of the Donald J. Trump Revocable Trust dated pril 7, 2014 as amended, correct?
Correct.
Q Compared to what we saw earlier, I would like to focus your attention to the first page, our responsibilities. Did you understand that since this letter was from Mazars to be the

responsibility of Mazars?
Yes.
Q Turn to the second page at the bottom. There's a section beginning "your responsibilities." Do you see that?
I do.
Q Did you understand that since this letter was addressed to the Trump Organization to be the Trump Organization's responsibilities?
Yes.
Q The last sentence on that paragraph, "you have the following "and "you" being the Trump Organization, right?
Yes.
Q "You have the following overall responsibilities that are fundamental to our undertaking the engagement in accordance with SS RS. Is that pronounced SS RS?
I don't know what that means.
Q But you understand that used the word "fundamental;" here. Mazars used the word "fundamental" here. You understood the letter before you signed it. You told us you wouldn't sign a document you didn't understand.
Okay.
Q Okay. So these are fundamental responsibilities of the Trump Organization. The first one, the selection of accounting principles generally accepted in the United States of merica as the financial reporting framework to be applied in the

preparation of the financial statement, do you see that?
Yes.
Q Did you understand that to be a responsibility of the Trump Organization?
Yes.
Q nd did they fulfill that responsibility?
This is referring to G P, I assume, accounting principles.
Q Do you understand that to be referring to G P?
Yes.
Q So let's assume it refers to G P. Did the Trump Organization fulfill this fundamental responsibility? It is a yes or no question.
Can you be a little more specific? I mean as far as -- a -- I see the language.
Q Yes.
re you referring to an asset or the statement in --
Q I'm referring --
-- in totality?
Q re you done?
Yes.
Q I didn't want to interrupt. Pardon me. I'm referring to "The selection of accounting principles under G P as you said, as the financial reporting framework to be applied in the preparation of a financial statement." We have established

that's a fundamental obligation of the Trump Organization?
Yes. The answer was yes.
Q Let me ask the question.
Do you believe the Trump Organization fulfilled that fundamental responsibility, yes or no? You don't have to look at your counselor. I'm over here.
I was going to look at the judge actually.
Q Okay.
THE WITNESS: It requires some explanation getting back to materiality when we complied with the G P requirement.
THE COURT: You can assume whatever you want, but the question is yes or no.
THE WITNESS: Okay. No.
Q Did you tell Mazars that you didn't fulfill this fundamental obligation?
Did I tell -- did I speak to Mazars and tell them --
Q Let's start with you. Did you ever?
No.
Q To your knowledge, did anyone at the Trump Organization ever tell Mazars that the Trump Organization did not fulfill this fundamental obligation?
Not that I'm aware of.
Q Let's look at number two. Do you understand that there is a semicolon after SS RS, so this is a list of the

obligations, right?
Okay.
Q The fundamental ones, right? Yes?
Yes.
Q Okay. Number two, "The preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of merica and the inclusion of all informative disclosures that are appropriate for accounting principles generally accepted in the United States of merica other than previously noted," do you see that?
I do.
Q Did you understand that that was a fundamental obligation of the Trump Organization?
The preparation of the presentation.
Q Yes. Did the Trump Organization fulfill that fundamental obligation? Yes or no question again, sir.
I'm going to -- again, it refers to preparation and presentation, so I think it was -- it was prepared. Yes, I think we fulfilled the obligation in the presentation and its preparation. So the answer is yes, I think we fulfilled the obligation.
Q Number seven, " n obligation to provide us with" and you understand the "us is Mazars there, right?
Correct.

Q The first bullet point is access to all information of which you are aware is relevant to the preparation and fair presentation of the financial statement such as records, documentation and other matters. Do you see that?
I do.
Q That was a representation the Trump Organization was making to Mazars, right?
Correct.
Q nd do you believe the Trump Organization fulfilled that responsibility or obligation with respect to the 2011 Statement of Financial Condition?
Yes. They had total access.
(Continued on the next page.)

MR. SOLOMON: Can we please turn to PX 741 in evidence?
Q Sir, do you recognize this document?
I do.
Q Is it another representation letter from the Trump Organization to Mazars or WeiserMazars?
Yes.
Q You'll see this format is a little bit different than the one we looked at earlier. Do you see that?
Yes.
Q Third paragraph, do you see, "We confirm to the best of our knowledge and belief," and the "we" there is the Trump Organization; right?
Correct.
Q " s of March 10, 2017 the following representations made to you during your compilation." Do you see that?
Yes.
Q Okay. "Number one, we acknowledge our" -- that's the Trump Organization again; right?
Correct.
Q "Our responsibility and have fulfilled our responsibilities for the preparation and fair presentation of the personal financial statement in accordance with accounting principles generally accepted in the United States of merica except for the following items." Do you see that?

I do.
Q Okay. nd then there is a paragraph that lists the exception; right?
Yes.
Q Those are the exceptions to G P; right?
Yes.
Q Okay. Did Mazars ever tell you you can only have one paragraph of exceptions?
I'm sorry?
Q You were free -- the Trump Organization was free to put in as many exceptions to G P as they believe appeared in the SOFCs; right?
Sorry. Say it again.
Q Sure. Let's take a step back.
This paragraph lists certain exceptions to G P; right?
Correct.
Q nd those are the ones that the Trump Organization believed appeared in the SOFC for June 30, 2016; right?
Correct.
Q If the Trump Organization believed there were additional exceptions to G P that appeared in the 2016 SOFC they were free to add them to this paragraph; right?
Correct.
Q Okay.
Can I answer that or is that a yes or no?

Q It's a yes or no.
Were you free to do it? Yes. Mazars never said you can't have anymore; right?
We relied upon the Mazars firm to understand G P and to understand what we couldn't adopt in there.
Q Sir, I'm glad you mentioned that.
Is it your testimony that in making a representation to Mazars you were relying on Mazars in making the representation back to them?
But they didn't --
Q Yes or no? You just told me you were relying on Mazars. Is it now your testimony that in making this representation in the rep letter you were relying -- "you" being the Trump Organization were relying on Mazars to make a representation back to Mazars? Is that your testimony; yes or no?
Not -- no.
Q Okay, okay. So you weren't relying on Mazars in making a representation back to Mazars? Okay, let's move on.
Number two. Can you scroll down to the next page?
"We have made available to you all financial records and related data and any additional information you requested from us for the purpose of the compilation. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your

compilation." Do you see that?
Yes.
Q This is for the 2016?
Correct.
Q nd you signed it March of '17; right?
Correct.
Q Four days after the conversation with Forbes; right?
Correct.
Q nd you also had in the files the first amendment to the condo dec; right?
Correct.
Q Did you tell Mazars you had that?
Mazars --
Q Yes or no did you tell Mazars that you had the condo dec showing the square footage of the triplex was 10,996 square feet?
gain, I didn't deal with Jeff McConney directly, so I don't know what Jeff McConney told Mazars about that.
Q s far as you know?
s far as I know I don't know what Jeff McConney told them.
Q Do you think Mazars would have signed off on that financial statement in March of '17 for June 30, 2016 if they were aware that there was contradictory information?
I don't know the answer to that question. I can't

speak for Mazars what they would do.
Q So in your experience --
Only because of the words -- if you read this in number three, it says "all material transactions." gain, going back to the word "material."
Q Good point. That's in number three, "material transactions." You're absolutely right.
Does the word "material" show up in number two?
I look --
Q It's yes or no. It's right there, number two. We've highlighted it all. " ll financial records." It doesn't say "all material financial records," does it; yes or no?
No, it doesn't.
Q It doesn't say "and material-related data," does it?
No.
Q nd then the second sentence "we have not knowingly withheld from you any financial records or related data in our judgment that would be relevant to your compilation." Doesn't use the word "material;" right?
Correct.
Q But if you wanted to use the word "material" such as in number three you knew where to put it; right?
I just happened to see it there.
Q Right, but you didn't put it in number two?
We didn't --

Q Yes or no it's not qualified by material, is it?
No.
Q Turn to Number 14, please.
Oh.
Q On that same document, please.
Here you're representing on behalf of the Trump Organization that no events have occurred subsequent to the date of the Statement of Financial Condition and through the date of this letter that would require adjustments to or disclosure in personal financial statement.
If you had known that the triplex was approximately a third of the size would you have adjusted the SOFC to reflect that change?
Yes-or-no question?
Q It's a yes or no.
Would you have adjusted the SOFC to reflect that change if you were aware that the square footage was recorded incorrectly?
No.
Q nd is that because you don't think it was material?
That's correct.
Q Does the word "material" appear anywhere in Number 14, sir?
It appeared in Number 3. I carried that throughout the whole document.

Q So when there are 16 things listed the fact that the word "material" appears in Number 3, you wanted to apply to all 16?
It's not what I wanted to do. It's how it was interpreted.
Q By whom, by you?
No. By whoever it was the one who told me it was okay to sign this.
Q How do you know that's how they interpreted it? You had a conversation with -- you told me it was Mr. McConney who reviewed this; right?
If they did.
Q Yes or no did Mr. McConney review this before you signed it?
Yes.
Q Did you and Mr. McConney discuss whether the word "material" appearing in Number 3 applies to all 16 of those listed?
Not that I can recall.
Q Okay. But you're assuming that's how he intended it?
I don't know what was in his thinking on how he got to that conclusion. I got to that conclusion by reading the documents today.
Q Okay. Not asking what you're reading today. I'm asking what was intended when this was signed in 2017.

I don't recall.
Q Okay. You don't recall a discussion from Mr. McConney the materiality applies to the entirety of this letter, every sentence?
I don't recall.
Q Okay. But we can agree that the word "material" does not appear in 14 at all?
That's correct.
Q But you wouldn't have told Mazars that the numbers you gave them were wrong because you didn't think that one particular entry for the triplex was material; right?
Sorry?
Q Sure.
You -- it's your testimony as you sit here today that you would not have told Mazars about the error in the size of the triplex because you didn't think it was material notwithstanding the representation that no events have occurred subsequent to the date of the Statements of Financial Condition and the date of this letter that would require adjustments to or disclosure in financial statement?
Yes, I don't know what I would have done at the time. I don't recall -- I don't --
Q So before you told me you wouldn't have told them because it wasn't material?
What I'm saying to you is that based on materiality I

would have. If I was sitting in that seat and someone walked into my office and said we found this, we should change it, I would probably go ahead and do it and make the change.
Q So you would make the change before signing the letter; right?
Yes. If I was focused on it and somebody told me to do it, yes.
THE COURT: Bearing in mind both participants, please one at a time. We only have one reporter and she is nodding her head yes. Don't talk over each other.
MR. SOLOMON: I apologize, Your Honor.
Q Sir, you mentioned earlier the process of creating a SOFC, you wanted a moment to describe it. Do you recall that?
Yes, I do.
Q Let's talk about that process.
Were you ever involved in selecting the methodologies used to determine the estimated current value of an asset that appeared on the SOFC?
Was I ever involved in it?
Q Were you ever involved in it?
I would say yes.
Q For some of the assets you used comparable sales, comps as they're referred to; right?
mongst other things.
Q Well, let's talk about those other things.

For others you might have used the operating income times a capitalization rate; is that right?
Correct.
Q Others might be as we saw with the triplex the size of the asset times a price per square foot; is that right?
That's one method.
Q Okay. nd the method used to value an asset was consistent year over year from one SOFC to the next, so from '14 to '15 was consistent; right?
Not every year. It could have been a change in methodology for one reason or another and -- yes.
Q When there was a change in methodology was that change in methodology disclosed in the SOFC?
It was disclosed in the work papers that was provided to Mazars, if I remember correctly. I haven't been at the company for a couple years. The spreadsheets that provided by Mr. McConney were comparative. I could be wrong, but if there was a change, he may have noted it. That's something you'd have to -- sorry -- that's something you would have to go back and look at the documents of the spreadsheet or wait for Mr. McConney. I don't know if he disclosed it. He may have.
Q My question was a little different.
Is it disclosed in the subsequent year's Statement of Financial Condition?
I don't know. I don't recall.

Q Do you know if there is any requirement under G P to disclose a change in methodology with a subsequent Statement of Financial Condition?
I'm not familiar with G P. I don't know.
Q So in creating a following year's Statements of Financial Condition, let's say, '15, is the first step Mr. McConney takes 2014 and marks it up?
It's possible. I don't recall exactly what he did year to year.
Q Is that one of the things you're aware that he did?
He may have. I don't recall.
Q Do you have any understanding how the first step in creating the next year's SOFC is undertaken?
From what I remember the way it was done we have some young ladies in our office who begin to gather data that Jeff would need to do the SOFC; cash balances, mortgage balances. I mentioned that before. I believe that next step Jeff would probably contact appraisers or brokers to try to ascertain from them some reports that might have on it some comps, cap rate, things that he can use as source material to be able to value whether it was commercial property or a VTL site, things of that nature. nd that would take sometime to gather that data and he would begin, I guess, the process. But again, I can't speak for Jeff what he did on a day-to-day basis. This took months to prepare this. This was not a simple task.

Q Is it your understanding that for each year Mr. McConney or someone at his direction would contact outside persons for cap rates, comps, things of that nature, you just described?
That's my understanding, yes.
Q nd he did that for each year?
s far as I know.
Q re you aware of any situation in which Mr. McConney, let's say, took a conversation that he had in 2013 and used it to apply information to the 2015 SOFC?
I wouldn't know that.
Q But you certified that those SOFCs were all in compliance with G P; right?
I did.
Q nd you don't know whether Mr. McConney used current or past information in the calculations; is that right?
Mr. McConney was with me for a long time. s you mentioned earlier, he had knowledge of what we were doing every year and I relied on him for all, sure.
Q But you don't know if he used information from a telephone conversation that he had two years earlier in doing financial statements?
I don't know. I don't know, no.
Q So let's focus on the time period precisely before Mr. McConney starts this process, okay?

Okay.
Q Let's focus on that for each year.
t that point in time have you met or discussed in any way with Donald Trump the Statement of Financial Condition or his views or expectations for his net worth for that year?
Not that I can recall.
Q You don't recall that ever happening?
I didn't say never. I was there.
Q I said you don't recall that ever happening; is that right?
I said -- I thought you said "ever," that it never happened. I was there for 20, 30 years, 30 years or more. I don't recall ever discussing his SOFC prior to Jeff working on it.
Q Do you recall discussing it with him while Jeff was working on it?
I don't recall that. I don't recall that.
Q Did you ever meet with Donald Trump and Michael Cohen where there was any discussion of a Statement of Financial Condition before it was finalized?
Not that I can recall.
Q re you saying it could have happened and you just don't recall or are you saying it never happened?
I don't recall. I don't recall it happening.
Q Maybe I'm missing it and I'm not clear.

You say you don't recall it happening. Is it possible it happened and you don't recall it or are you saying it did not happen?

I'm saying I don't recall it happening.

Q But it's possible it did?

I mean, if he would have walked in Donald's office when I was there and he walked in for a second and walked out, it's possible. People would walk in and out of Donald's office all day long, whether he was one of those people that walked in -- are you asking me whether it was a longwinded discussion about the statement? Is that what you're asking?

Q I don't believe I ever used the word "longwinded." I've been called longwinded, but I don't think I ever used it.

So let's take a step back. I'm asking any discussion at all concerning the SOFC before it was finalized; you, Mr. Trump and Mr. Cohen?

No.

Q No, it never happened?

I don't believe it ever happened, no. I don't believe it happened, no.

Q Did you ever meet with Donald Trump and Michael Cohen where there was any discussion at all about Mr. Trump's net worth prior to finalizing an SOFC?

Not that I can think of, no.

Q gain, let's go back to this.

re you saying it never happened or you don't recall it might happen?

Well, I don't believe it happened, no.

Q Did you ever meet with Donald Trump and Michael Cohen where Mr. Trump's net worth was discussed?

Not that I can recall. gain --

Q Same question: Is it not that you recall it could have happened or it did not happen?

You're asking me to go back a number of years.

Q Yes, I am.

nd my memory doesn't -- again, I don't remember every meeting that ever took place in that office. s I sit here today, I don't believe it happened, no.

THE COURT: That doesn't answer the question, does it? The question is could it have -- could it have happened and you just don't remember?

MR. KISE: Your Honor, I'm not sure that was the question, respectfully.

THE COURT: Well, I'm asking him. I think that was the question, maybe not in so many words.

MR. KISE: I mean, anything is possible. I think he's asked and answered that question, respectfully.

THE COURT: I disagree because he keeps saying I don't remember it happened, but he doesn't say no, it could not have happened. So that's what we're trying to get at.

THE WITNESS: I hear you, Your Honor. I would say it did not happen. Did that answer your question?

THE COURT: It did not happen -- all right. That answers the question. Thanks.

THE WITNESS: I'm sorry.

Q fter Mr. McConney in the years that he was there had a draft of the SOFC put together, did he give it to you for review?

He did.

Q nd did you review it?

I reviewed -- I reviewed it from a 30,000 foot level, meaning just to make sure our liabilities would be shown properly, to make sure the assets -- that all the assets that we have was still on the statement, but I spent a lot of time reading the notes to his statement.

The notes were a very important part for Mr. Trump. Besides this being a Statement of Financial Condition, it was also sort of a piece -- a little bit of a marketing piece for banks to read about our properties and how well they're taken care of and how they're first-class properties, world-renowned properties throughout the world. So those notes were kind of important to him.

Q re notes to a financial statement an integral part of that statement?

I believe if you read the statement you read it

together, yes.

Q Did you also from time to time give Mr. McConney suggestions on how to value a particular asset?

What would happen is we would sit down in an office --

Q It's a yes-or-no question, sir.

Did you from time to time give Mr. McConney suggestions on how to value an asset?

Suggestions, yes.

Q Now tell me. You would sit down in an office?

nd he would show me, for argument's sake, with comps, with cap rates and I might not always agree with him one he chose to use for one reason or another. What that reason is today, I don't know. nd I would suggest maybe you ought to consider doing a different building as a comp; it's closer to what our building is like.

For example, you could have a commercial building without a retail component where we do have a retail component. He may have overlooked that. So it's not a fair comparison to take a building without a retail component and compare it to a building with a retail component, so I would make that change.

Q So Mr. McConney is someone you relied upon; right?

I relied upon, yes.

Q Someone whose work you relied upon in signing representation letters?

Yes.

Q You're saying it was possible he overlooked the fact that one building had a retail component and the other one didn't?

That's a lot of work he was doing, so that one thing could have happened. It's possible. We aren't all perfect. That's a possibility he may have overlooked a fact that 40 Wall Street for argument's sake or Trump Tower commercial has something that another building didn't have or maybe he doesn't know the physical makeup of one building versus another. He may have better tenancy in one building than another. nd then when you do it on a comparison basis to what he was using, he may not have known about every tenant.

I worked on -- I did a lot of lease work, so I knew the makeup of the tenancy of a building where we have more creditworthy tenants than maybe the building he chose to use, which maybe he didn't have as many creditworthy tenants. So that might change what building he use. I used retail just as an example of something. It's not the only thing that would be looked at on a comparison basis.

Q Understood. That is something though you used as an example of something Mr. McConney might have overlooked; right? That was the example you gave; right?

mongst other things.

Q mongst other things.

So Mr. McConney, his work was not perfect, is that fair

to say?

Well, I don't think any of us are perfect.

Q So you looked over his work and you made changes; right?

I would look at every line item of his work. I would look over the higher valued assets to make sure they were properly being valued. I always wanted -- I always tried to be fair and so -- fair and reasonable in what we were showing and sometimes it would come out with a lower value than he would, but it would be more accurate and fair and a truer picture of the comparison.

Q s you sit here today, do you recall a specific example where you came out with a lower value for an asset than he did?

I don't recall. It's so many years. The answer is no. I can't recall.

Q You mentioned that you had a better sense of the creditworthiness of the tenants in some of the retail space -- in some of the rental spaces; is that right?

re you talking about being in commercial?

Q In the commercial building. You had a better sense of the creditworthiness?

nd the reason for is when we go through a lease process we try to learn about the tenant coming into our building. fter all, if the tenant can't pay his rent in a year from now, we don't want that tenant in our building. So we

would look at their financial statements. We would see what kind of tenants they were. Jeff McConney was not part of leasing at all, so he wouldn't know about the creditworthiness.

Q So you were on the creditworthy tenants that you were sure to be able to pay the leases?

Or a tenant that could provide us with enough information about the company, where they're going. It could have been -- we could have startups in some buildings, but they could be well capped.

Q Did Dean & DeLuca rent space at 40 Wall Street?

They did.

Q How did that work out?

Well, they -- when Dean & DeLuca took the space they were one company. They were bought over by somebody in later years and they changed their entire dynamics. They began to sponsor golf tournaments and tennis tournaments and they tried to make Dean & DeLuca what it wasn't and in doing so they had a problem and they couldn't succeed there.

Q nd they filed for bankruptcy protection, didn't they?

I don't know. I think they did, but I'm not really sure. But they were -- their creditworthiness was day to day. It's like any other company. They could be creditworthy today and something happened, they could change their model of how they operate their business and all of a sudden things don't work out well. Bed Bath and Beyond and there are many other

tenants as they're all creditworthy at one time. Unfortunately, the world's changed. It happens.

Q So you never know what's going to happen in the future; right?

You have to work with what you have in front of you at the time.

Q Right, so you can't predict --

THE COURT: I am --

MR. SOLOMON: I'm sorry.

THE COURT: One at a time.

MR. SOLOMON: It's just he's going on expanding upon questions that are simple yes or nos or one-word answers.

THE WITNESS: Oh, I'm sorry.

Q So you can't predict the future as you just said; right?

Correct.

Q In doing valuations for assets that appear on the financial statements were you predicting future development for those assets; yes or no, sir? Were you predicting the future for those assets; yes or no?

Yes.

Q Okay. Were you predicting future revenue streams; yes or no?

I don't recall. I don't recall what Jeff did in

valuing those assets.
Q t one point in time in valuations for golf course assets do you recall using fixed asset methods for the valuation?
I do recall that.
Q nd do you recall directing Mr. McConney to add a 30 percent premium to the fixed assets to reflect an operating --
I do recall that.
Q Was that disclosed anywhere in the Statement of Financial Condition?
It was disclosed in the notes -- I'm sorry. It was disclosed in the work papers that were given to Mazars.
Q Sir, I don't want to cut you off and interrupt you. That wasn't my question. I asked if it was disclosed in the Statement of Financial Conditions, not in the work papers to Mazars, not in conversations you might have had with someone. Was it disclosed in the Statement of Financial Conditions. It's a yes-or-no question.
What was the question? Was the 30 percent --
Q Was the 30 percent premium that you directed Mr. McConney to add to the fixed assets disclosed in the SOFC; yes or no?
No.
Whereupon, the transcript continues on the

following page....

Q You also solicited information as to valuation of golf courses from people outside of the organization from the Statements of Financial Condition, right?
I believe we may have used one or two people.
MR. SOLOMON: Can we, please, mark PX 3116 for identification.
Q We marked PX 3116 for identification. It is a cover e-mail and a letter that you were attaching. Do you see that?
Yes.
Q Is that an e-mail that you sent to E. Carlyle at Forbes?
Yes.
Q So actually --
I don't understand. It says first administrative group. What is that after my name on top? I don't know what that means. That's not my e-mail address. I don't know why that's there.
Q That's actually not an e-mail address.
I don't know why that's there.
Q If we can scroll down to the bottom of the page, you see it has a TT00 Bates number at the bottom.
I see that, but I don't know what administrative group is, first admitted. I don't know who that is.
Q I'm not saying you put that on there, but this is an e-mail, though, that you sent to Ms. Carlyle, right?

Yeah. gain, it's from me. I just don't know what -- I wouldn't -- that would not be part of my e-mail, typical e-mail. I don't know where --
THE COURT: I don't think you were asked that.
THE WITNESS: The answer is yes, it is my e-mail.
THE COURT: It is your e-mail. That's all we need to know.
Q The second page, you attach a letter that you had received from Steven M. Ekovich. Do you see that?
Yes.
Q Do you recall receiving that letter from Mr. Ekovich in or about July of 2013?
I remember it now. I just don't recall -- it was ten years ago. I don't recall.
Q Do you recall receiving some communication from Mr. Ekovich -- please let me finish -- in which he told you what an appropriate gross review multiplier would have been for assets in the Trump golf portfolio?
Yes. That was his undertaking of what he felt it should be.
MR. SOLOMON: We offer PX 3116 in evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 3116.)
Q So this, according to what Mr. Ekovich is describing in

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his letter to you, is a different way of calculating value for golf course assets, right?
It is another methodology.
Q nother methodology. That takes gross revenue; is that right?
Yes, but I'm not sure -- but I'm not sure what he's including in gross revenue. That's a big -- that's a big difference.
Q Understood. He's actually using it as a capitalized term gross revenue multiplier?
It is not defined anywhere.
Q Understood. You take gross revenue and you multiply it by an appropriate multiplier, whatever the revenue may be and however it is calculated; is that right?
That's one method.
Q That's one method.
Now, if we go back to the first page, you'll see that you are telling someone at Forbes that this person is a top golf course advisor on buying and selling of courses, right?
Correct.
Q Did you believe that to be true when you sent this to E. Carlyle?
I don't know him. I never met him. I was told by somebody else in the organization that he was, so I relied upon that person; but I don't know the person.

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Q Your earlier letter was addressed directly to you?
Yes, because the person I asked to help me on this told him to send it to me.
Q So you took this person's word? You took this person's advice or comment that this person was a top golf course advisor on buying and selling courses? You accepted that as true?
I did.
Q Okay. nd then you conveyed it on to Forbes, right?
Correct.
Q nd was that because you wanted Forbes to value the Trump Organization's golf courses in a particular methodology?
I don't -- I don't remember why I gave it to them. I don't -- I don't know the context of the conversation we had with Ms. Carlyle, what her questions were. It is sort of being taken out of context.
Q I'm not trying to take it out of context.
Not this. Not this, why I gave her this letter. That's the point. I'm not quite putting together with giving her the letter as to what was she asking and why did I give it to her.
Q Did you tell Mr. McConney that this was a method that he should use to value the Trump Organization's golf courses?
I don't recall. I don't recall.
Q Do you know if the Trump Organization ever used this method to value its golf courses?

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gain, I don't recall.
Q Do you know if the Trump Organization ever did a preliminary valuation using this method?
gain, I don't recall.
Q You don't know if Mr. McConney ever did that?
I don't then.
Q Do you know if Mr. Birney ever did that?
I don't know.
Q Do you know if using this method would come out with a higher or lower value for the Trump Organization golf courses than appeared on the Statement of Financial Condition?
I don't know.
Q Did you also provide information to Mr. McConney at some point in time that the 30 percent premium for the golf course should be reduced to 15 percent?
It's possible. I just don't recall it.
Q You don't recall one way or the other?
I don't remember.
Q Do you recall any discussion at all in which the subject of the 30 percent premium came up and there was a determination made that it was too high?
It's certainly possible. I just don't remember. It could have been -- I don't know what year it was, was there something going on in the economy to reduce -- I don't know.
Q The letter that's the second page of this exhibit, did

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you ever give it to Mr. McConney?
I don't recall. I may have. I just don't remember. You're going back a long time ago. I just don't recall.
Q Understood. So did you ever provide it to Mazars?
I dealt very little with Mazars on these statements. Everything went through Jeffrey McConney, so if I gave it to him, hopefully he would have given it to them or maybe not; but I don't recall giving it to Jeffrey McConney sitting here today.
Q But personally, you never gave it to Mazars, right?
Not that I can remember, no.
Q Did you also send -- withdrawn.
I believe you indicated earlier that you sent comps to Mr. McConney?
I sent comps.
Q Or you provided comps to Mr. McConney?
No, I didn't. Mr. McConney would contact third parties, appraisers and request from them these reports that would give him the comps, cap rates and any other material that might be helpful in determining valuation.
Q Did you give comps to Mr. Birney?
gain, this was -- all the work that was done to get valuations was all done by Jeffrey McConney, by himself for a while and then with Patrick Birney subsequently.
MR. SOLOMON: Could we, please, mark as PX 1040.
Q Sir, have you ever seen PX 1040 or any of the pages in

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it before today?
Has to be as of the time when these things happened, but yeah.
Q Do you recall one way or the other?
No. I said possibly when I -- when it first happened, the event itself that's on here.
Q You said possibly. So -- do you recall one way or the other?
I'm sure -- you know, I wish I would have seen the publication it came from because there's some publications I -- that would help me.
Q Okay. If you see on your first page of this exhibit, there appears to be -- is that an adding machine tape, sir?
Yes, that's not my handwriting.
Q That's what I was going to ask. That's not your handwriting?
THE COURT: Ten-minute warning. Time goes fast when we're having fun.
Q If you look at the second page, this is an e-mail from you to Patrick Birney?
Okay.
Q Forwarding and it is blank what's being forwarded, but you indicated it is more info on the house purchase in PB. That's Palm Beach, right?
Yes.

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Q So you're sending him information about a sale in Palm Beach, right?
Correct.
Q nd are you giving that in connection with his valuation of a Trump asset?
Yes.
Q Which one?
Probably Mar- -Lago.
Q Okay. So contrary to what you mentioned before, you actually did send Patrick Birney comps?
Well, no. What I said -- no, what I said -- what I said to Patrick Birney -- you can call them comps. I said during the course of the year. You stated this was done in September?
Q Yes.
Whenever I found something in a newspaper article, I would just throw it in a file, when you work on Mr. Trump's financial statement, just have it as a reference point because we really had no one in Florida or I don't think he had anyone in Florida. You can call, but when I found it myself, I said you know what. Look at this. It may work. It may not work. See what it was per acre, the sale. Maybe you could extrapolate it. We may have things at our property that they don't have at their property. We could add to it. But as far as when you mentioned comps before, I was referring to Manhattan real

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estate. I was thinking of Manhattan real estate, commercial buildings. That was in my mind. That was my mindset.
Q If I asked you the question comps for any asset on the Statement of Financial Condition, you did send information about what you believe to be comparables to Mr. Birney, right?
The answer is yes.
Q Same question for Mr. McConney now.
When he was doing it himself, the answer would be -- the answer is yes.
Q Let's look at the next page 4 of 20.
What number?
Q Page 4 of 20 --
Okay.
Q -- on the exhibit. gain, an e-mail from you to Patrick Birney, right?
Okay.
Q You see that?
Yes.
Q If you look at the next page, is that your handwriting on that little yellow Post-It note there?
On what? The -- on that tape?
Q Not on the tape. On the little yellow Post-It. If you look on the screen.
No.
Q ll right. nd I assume that's not your handwriting on

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the tape because you told me that handwriting earlier wasn't yours?
No. That's why too neat.
Q If you turn to the sixth page of this exhibit.
Page six?
Q Yes. There is highlighted. Do you see that?
Yes.
Q Did you put that highlighting on it before you sent to Mr. Birney?
I don't recall if I did or not.
Q This exhibit continues on with additional information about other properties in that area, right?
Yes.
Q nd if you look at page 9 of 20 --
Yes.
Q -- there's a larger yellow Post-It. Do you see that?
Yes.
Q I assume that's not your handwriting, right?
No, it's not.
Q Do you recognize whose handwriting that is?
I don't.
Q Turn to the next page.
Okay.
Q You'll see that Ed Raymundo, if I'm pronouncing that correctly.

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Yes.
Q Is sending an e-mail to Patrick Birney with the phrase "comparison is attached." Do you see that?
Yes.
Q Then you'll see two pages later, there's an article that is cut out of -- it appears to be cut out of a good old-fashioned newspaper. Do you see that?
Yes.
Q That's on page 12 of 20?
Yes.
Q Underneath that, there is a Post-It?
That's my handwriting.
Q I was about to say have we gotten to your handwriting, sir?
You got it. That's it.
Q You instructed Patrick to take this Palm Beach estate asking price of 135 million --
Yes, and the note says hold it for next year DJT financial statement. Let's see what it ends up selling for because we don't know -- that's -- that's the asking price.
Q Why does it matter what it sells for?
Because anybody can sell anything for a dollar amount. It doesn't necessarily mean it is going to sell. We want to be able to get a comparison that is the final number. He's asking 135. Maybe it will sell for 100 million. I will use 100

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million.
Q So it is the selling price that's relevant in the comparison, not the asking price?
Yes.
MR. SOLOMON: This might be a good time for a lunch break.
THE COURT OFFICER: Remain seated.
(Witness exits the stand.)
(Whereupon, a luncheon recess was taken.)
F T E R N O O N S E S S I O N
* * * * *
THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.
THE COURT: You all look happy. I guess that's because you had an hour and-a-half, not just an hour and 15 minutes.
(Witness resumes the stand.)
THE COURT: We're back on the record. Let's continue with the direct examination of Mr. Weisselberg.
BY MR. SOLOMON:

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Q Good afternoon, Mr. Weisselberg.
Good afternoon.
MR. SOLOMON: One housekeeping matter my colleagues have reminded me. I failed to move PX 1040 into evidence. I would like to do that now.
MR. ROBERT: No objection, your Honor. I just want to be clear this is from a McConney backup. Just because it is so many different pages, I want to describe it as what it is, as it is a series of documents, so we can agree this is part of the McConney backup.
MR. SOLOMON: I'm comfortable with a backup.
MR. ROBERT: Fair enough.
MR. SOLOMON: Sufficient?
MR. ROBERT: Sufficient.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 1040.)
Q Mr. Weisselberg, before we broke for lunch, we were talking about Mr. Steven Ekovich, if I'm pronouncing that correctly?
I think so, yes.
Q Do you recall him, sir?
Yes.
Q I think you testified that you had some familiarity with him, right?

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I never met him. I know the name through someone else in our office who is part of our golf division and that's the extent of my knowledge of him.
Q Well, you actually had some direct communication with him?
He may have e-mailed me. I don't think we ever met face to face is what I'm saying. I don't believe so.
Q Have you finished?
Yes.
Q But you did, in fact, have several communications with him about valuations of golf courses, right?
Several. I know one you showed me earlier today.
MR. SOLOMON: Can we, please, identify PX 3143 for identification.
Q Sir, if you look at what's been marked as 3143 excluding the top e-mail, if you look at the second one, it is from you to Mr. Ekovich from ugust of 2015. Do you see that?
Yes.
Q nd you're asking him how much you would be able to increase that value due to brand and intrinsic value. Do you see that?
Yes.
Q In fact, you're asking him how to quantify the premium, right?
Yes.

Q Now, if you go down one further, Mr. Ekovich had actually written to you telling you golf valuations are an art, not a science. Do you see that?
Yes.
Q nd he provides certain gross revenue multipliers, sixth line down .6-1 time gross revenue. Do you see that?
Yes.
Q nd then the next line, if the EBIT is below 400 to 500,000, do you see that?
Yes.
Q Do you have an understanding as to what EBIT is?
Yes.
Q What is that?
Earnings before interest, taxes and depreciation.
Q So you're communicating with Mr. Ekovich in 2015 with respect to golf course valuations, right?
Yes.
MR. SOLOMON: I offer this in evidence as PX 3143.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 3143.)
MR. KISE: One thing. So did they -- was this produced to us? What day? Was that one of the ones over the weekend?
MR. SOLOMON: No, this is actually being used to

either refresh the witness' recollection --
MR. KISE: I'm just trying to figure out.
MR. SOLOMON: What's the question?
MR. KISE: I'm trying to figure out when we got this document.
MR. SOLOMON: Just now.
MR. KISE: 3143, you're not introducing it into evidence?
MR. SOLOMON: I am introducing it into evidence. You were given it just now because we pulled this. It was not on our list before, but we pulled this to refresh the witness' recollection. He had several other conversations with Mr. Ekovich.
MR. KISE: Okay, but that wasn't on your list before; yes, no? I just don't recognize is my question.
MR. SOLOMON: No, it was not.
MR. KISE: I'm not -- your Honor, I'm not fully objecting. I want to make sure that when it comes time, if it comes time, we are extended the same courtesy. This wasn't on their list. I'm not necessarily objecting to it. I just want to be sure that what's good for the goose is --
THE COURT: Yes.
MR. KISE: That's all I'm saying because I don't recognize it.
THE COURT: Give me a second.

(Whereupon, there was a pause in the proceedings.)
THE COURT: I'm, of course, trying to be fair. I don't know how far we are going to extend this, but go ahead.
MR. SOLOMON: I would also just note this is being used for impeachment purposes. The witness testified he didn't really remember Mr. Ekovich and may have only spoken to him on that one occasion. So this is obviously being used for impeachment.
THE COURT: I think that's totally acceptable.
MR. KISE: gain, I'm just pointing out that it is a new exhibit. I hear what he is saying, but just making that record. I'm not objecting to the introduction of it.
THE COURT: Duly noted and it is in evidence.
MR. SOLOMON: Thank you, your Honor. Can we, please, show the witness what we've marked as PX 3144 for identification.
Q Mr. Weisselberg, have you seen this document before that's been marked PX 3144?
It was certainly sent to me. I just don't remember it, but I see it in front of me now, yes.
Q If you see on the e-mail chain, there is a discussion with you and Mr. Ekovich.
You don't mean the first one, do you, with that language in there?

Q We can pass upon that language.
I just saw that. It caught my eye.
Q Understood, but if you look at the bottom of the first page, Mr. Ekovich is telling you typical cap rates are 11 to 14. I would say you are in the 8 to 10 range. Do you see that?
Yes, I do see that.
Q Then he asks were you able to send the comps and supporting e-mail to the reporter. Do you see that?
I see that.
Q Do you understand that to be the reporter from Forbes?
I would imagine so, yes.
Q nd you told him, thank you. Yes, they were sent and we received a slight bump. ppreciate your help. From you to Mr. Ekovich, September 20, 4:18 p.m. --
Can you just read back the last -- you know why? It is on the back of the page.
Q No problem. On the very first page.
I was flipping pages.
Q On the very first page, if you see a highlighted in yellow on the screen. Thank you --
That I see, yes.
Q So, in fact, you relied upon information from Mr. Ekovich and you provided that to, who Forbes, right?
Well, it was one of many -- we didn't use that as the only source of material to value golf courses.

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Q But this is what you relied upon in trying to bump up the valuation on Forbes, right?
It was to explain what we did. I don't know the reasoning behind -- why we gave it to them.
Q It says we received a slight bump.
They looked at it and they gave us a bump, okay.
Q So initial communications with Mr. Ekovich, right?
Yes.
Q This refreshes your recollection that you actually spoke to Mr. Ekovich on several occasions about valuation of golf courses --
When you say --
Q -- of Trump assets?
When you say spoke, you are referring to e-mails?
THE COURT: That's the ambiguity here.
MR. SOLOMON: Sure.
Q If I expand my question, sir, to ask you did you have several communications with Mr. Ekovich concerning the valuations for Trump golf courses.
Yes, and I believe there were other experts that we spoke with as well, so we may have used a combination of people.
Q So just so we are clear, you had several communications with Mr. Ekovich, though, right?
Correct.
MR. SOLOMON: We offer PX 3144 in evidence.

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THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 3144.)
Q Let's go back to the process for creating the Statements of Financial Condition in any given year, if we can.
Just so we're clear, between 2011 and your departure from the Trump Organization, did you perform any valuations for any of the assets on the Statements of Financial Condition?
When you saw my personally.
Q Yes?
I don't recall doing anything like that.
Q Do you recall testifying at one of the investigatory sessions we had "I certainly a.m. not one to value a property. I have no idea what properties are worth?
I would rely on experts to do that.
Q But do you recall that's something you had said at one of the motions?
I either do -- I don't recall it but certainly possible.
Q You're not disputing it, correct?
I'm not disputing it.
Q Is it still your position, sir, that you have no idea what properties are worth?
I have no idea -- no. I personally -- if I looked at a building, I couldn't tell you what it's worth. I would have

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to go to an expert to help me to do that.
THE COURT: Move the microphone closer. You might --
THE WITNESS: Yeah. Yeah.
THE COURT: They are really quirky microphones. You could be right there and you have to talk right into it.
THE WITNESS: Second time.
Q Was it your testimony earlier today that between roughly 2011 and your departure, you were involved in reviewing the notes to the Statements of Financial Condition before they were finalized?
The notes -- the notes, yes, which describe our properties, discuss any liabilities that are associated with the properties, things of that nature. Those notes is what I'm referring to.
Q Was that because you understood that Mr. Trump wanted the assets described in the best possible light?
Yeah. Well -- yeah, he has his own way of writing. I might use a word that is -- he may use a different word than I might use, but it is his statement, so I gave him the opportunity to correct a word here or there that he didn't like. By the way, a lot of these notes were written by the Mazars firm. I would come back and alter it a little bit and then the final draft came out and I would give it to Mr. Trump to review. He might say don't use the word "beautiful." Use the words

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"magnificent" or something like that because it was not just a Statement of Financial Condition, but it was also a way of telling anybody who read it how our properties are, not typical properties, premier properties, and he wanted to be in that vein because you put a lot of effort and money over the years into making these properties exactly that.
Q Do I understand correctly then for each year from 2011 and your departure, before the Statement of Financial Condition was finalized, you would give it to Mr. Trump?
Yes.
Q nd did you understand that he would re- --
No. No. Well, well, once he became president --
Q Certainly. I'll rephrase my question.
Between 2011 and when Mr. Trump became president, did you give him a Statement of Financial Condition prior to the time it was finalized?
Yes, I did.
Q Did he have an opportunity to review it?
Yes.
Q To your knowledge, did he review it?
gain, once I gave it to him and I left his office, what he did with it, I wouldn't know.
Q Did you ever receive comments on a Statement of Financial Condition from Mr. Trump before he became president?
Periodically.

Q Once Mr. Trump became president, to whom, if anyone, did you give the Statement of Financial Condition for review before it was finalized?

I don't remember. I was -- I don't remember whether I gave it to Eric Trump and/or Donald Trump. I just don't recall. I may have. I just don't remember.

Q When you say Donald Trump, you mean Donald Trump, Jr.?

Yes.

(Continued on the next page.)

Q When you say "Don Trump," are you referring to Don Trump, Jr.?

Yes.

Q Between 2011 and when Mr. Trump became president, would he convey to you, in form or substance, that he had no additional comments to the SOFC?

re you talking about the years blend in one after the other? I don't remember if he said those words to me exactly as you're putting them.

Q That's why I asked in form or substance.

You had an understanding at some point in time between 2011 when he became president that he was okay with the SOFCs; right?

Yes.

Q Okay. Prior to gaining that understanding that he was okay with the SOFC, did you ever send it to Mazars between 2011 and when Mr. Trump became president as a final version before Mr. Trump signed off on it?

Not that I can remember, no.

Q Let's talk about Seven Springs.

re you familiar with the property known as Seven Springs located in the towns of Bedford, New Castle and North Castle, New York?

s one of our assets, I was there once many, many, many years ago to tour the place, but that's probably the extent and

we have -- yes, that's pretty much the extent.

Q So you are familiar with it?

I am familiar with it -- I realize that. I'm sorry.

Q I didn't want to cut you off, sir.

No. No, I'm sorry.

THE COURT: I guess "familiar" could be interpreted different ways. I think Mr. Weisselberg was partly saying to be familiar with it you have to be there, but I think Mr. Solomon's meaning was just did you know if it exists.

THE WITNESS: I understand that now.

THE COURT: So you know it exists and you know you were there a long time ago?

THE WITNESS: Yes.

THE COURT: Just give me one second.

(Whereupon, there is a pause in the proceedings.)

THE COURT: Thanks. Go ahead.

CONTINUED DIRECT EX MIN TION

BY MR. SOLOMON:

Q Seven Springs is one of properties that appears as an asset on the Statements of Financial Condition; correct?

Correct.

MR. SOLOMON: Can we pull up the 2014 SOFC, PX 730?

Q Do you recognize this document, sir?

Yes.

Q What do you recognize it to be?

Statement of Financial Condition of Donald Trump dated June 30, 2014.

MR. SOLOMON: Could we please turn to page 20 of 26 on the exhibit?

Q Do you see across the bottom, "mansion at Seven Springs." Do you see that?

Yes.

Q "The property is zoned for nine luxurious homes. It has been valued at $291 million based on an assessment made by Mr. Trump in conjunction with his associates of the projected net cash flow which he would derive as those units are constructed and sold and the estimated fair value of the existing mansion and other buildings." Do you see that?

Yes.

Q Now, in doing this calculation to get to $291 million was any discount to the cash flow applied to account for the time it would take to obtain all necessary approvals, build the homes and then sell the homes?

I don't know. I don't know.

Q Do you know if a -- have you ever heard the term "present value of money?"

I've heard that. I've heard that term.

Q re you familiar with it?

To a degree.

Q You understand that $10 ten years from now is not the

same as $10 today; right?
Yes, and I believe these financial statements were what we felt the property was worth on that date we did the financial statements.
Q So but as you sit here today, you don't know if any discount of present value was applied to the $291 million projected net cash flow, do you?
No, I don't.
Q Now, beyond just Seven Springs do you know if for any of the valuations on any Statement of Financial Condition between 2011 and your departure there was an application to determine the present value of a future income stream?
I don't know whether that was done or not. I didn't work on the calculations, but I believe that the values were based on what we felt we could settle for on that date, on the date of the financial statement. That was valued -- for example, if you take a building, a commercial building, you have leases in place and we took the current values of those leases that day and did our -- and went from there. That became our NOI with the cap rate. In ten years later those leases that were $20,000 square foot, could be $90 a square foot. So we didn't work with that $90. We worked with $20 as of today to come up with our NOI.
Q Is that what you understand this cap to present value mean?

Yes, we were using the values as of that date.
Q That's a snapshot, sir, of the valuation, isn't it?
I don't know how you describe --
Q You didn't assume that ten years of rent you had it on the day of the valuation, did it -- did you?
No. The way the valuation -- sorry.
Q Yes-or-no question.
Finish the question.
Q You didn't assume you had all that money on day one; right?
We weren't --
Q Yes or no? For the lease, the lease you just described, did you assume that you had the ten years of rent payments on June 30th of any given year?
nd that's what -- why we consider it. We didn't have it.
Q You didn't have it, so you didn't consider it?
Correct.
Q So let's talk about projects under development. That's a category in the financial statements; right?
Correct.
Q Mentioned at Seven Springs, that's a project under development for a period of time; right?
Correct.
Q In fact, at one point in time ten, 20 years ago, the

Trump Organization was thinking about putting a golf course there; right? Do you recall that?
There was discussion about that, yes.
Q But you couldn't get the proper zoning for that; right?
Correct.
Q So you had to give that up?
I believe so.
Q Okay. So then it became a concept of building mansions on the property; right?
Correct.
Q So on the day of this financial statement as of June 30, 2014?
Okay.
Q Okay. The value of the development rights for this property was not discounted to present value, was it?
The -- can I answer it other than yes or no?
Q Can you answer it yes or no?
THE COURT: Seems like a yes-or-no question.
Well, the question is when the zoning is arrived at or was obtained or when the zones were built assuming you weren't just selling land. This could be your land sales, nine -- it has -- it's zoned for nines homes. Doesn't mean we're going to build the homes. We could sell the land that day for those numbers. They could go out and get their zoning.
Q Did you think you could sell the land that day for

$291 million?
I didn't have a backup to those numbers. I don't know the answer to that question.
Q Is that how you read that, though?
I read that the property is zoned for nine luxurious homes. It has been valued on this date. When --
Q Based on?
-- in conjunction with his associates based on projected cash flow.
Q Projected net cash flow?
Correct.
Q That's not a dollar you have on June 30, 2014; right, projected? Is that right?
Yes. Projection could have been in a week later. It's a possibility he could have --
Q Nine luxurious homes build, get zoning for them, build them and sell them a day later. Yes or no, sir? Is that what your testimony is?
I'm trying to read the question -- I mean, I'm trying to read the paragraph.
Q Go ahead.
The property is zoned for nine luxurious homes. It doesn't mean the homes are being sold for 291 million. I don't see that.
Q I'm not saying the homes are being sold for 291, sir.

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What I'm asking you is it's the projected net cash flow he would derive as those units are constructed and sold and the estimated fair value of the existing mansions. s they are constructed and sold, future tense, future; right?
Correct.
Q They're not doing that the next day; right?
Okay.
Q You agree with me?
Yes, I do.
Q Okay. You're familiar with Seven Springs. You told me that before. You've been up there?
Yes.
Q Barren land, right, except for the existing buildings?
Except it was a mansion on the property, one mansion.
Q Right, so there had to be some period of time to get the proper zoning, some of it for nine homes was there. It had to be sometime to break the land; right? Had to be sometime to build the homes; right?
Correct.
Q Sometime to market and sell them; right?
Could have done it in a year. I don't know the time period.
Q But this doesn't account for anytime period, does it?
Nor do I know whether Mr. Trump would go out and try to market the property while the zoning was going on, sign

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contracts while the zoning was going on subject to getting that zoning. lot of things could have been going on. He could have been building the models. I don't know what he has in his mind with that property. I wasn't really involved in the development of the property, but I --
Q re you sure about the time?
That I was involved in the --
Q That you were not involved in the development of the property?
I didn't -- I'm not a developer. I wouldn't know where to start.
Q But the development of that property -- you were not involved in the development of that property. Is that your testimony?
No, I don't understand your question what you're saying to me. The development, meaning working with people to get information to help them get zoning, that numbers, things of that nature.
Q Or working with people to determine how the property would be developed if at all?
I don't recall -- I mean, I recall people working on it specifically. They may have called me for certain information, but I don't recall developing or where to begin developing a property.
Q re you certain of that as you are the rest of your

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testimony?
Sorry?
Q re you certain of that last answer as you are the rest of your testimony?
s it pertains to this property, yes, sir.
MR. SOLOMON: Can we mark PX 3114 for identification?
THE COURT: Please don't talk over each other and I'm not sure that that point was ever really made because you went on all sorts of tangents.
I think, Mr. Weisselberg, what Mr. Solomon was trying to get you to do, you can do it or not, I think what he was trying to get you to do was to acknowledge that since the number up there was based on future events for planning, the building, for selling, that the net eventual proceeds needed to be discounted to take into account that that would not occur right away. m I describing that correctly?
THE WITNESS: You are. I don't know on the G P what the requirements are to value something that may have future value. I'm not a G P expert. I think if the Mazars firm who's part and parcel of producing this statement realizes that G P does not permit that they would have said something to us evidently knowing this is a future development. They allowed the number on the statement the way it is.

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THE COURT: Just before we move on to this next document, Mr. Solomon, I've advised for you, for all the lawyers, for everybody in the room, this is a particular pet peeve of mine and it will make life simpler of everyone. Don't ask questions in the negative. For example, the questions are often "you didn't do that, did you?" nd then well, there is a no answer, meaning "no, I didn't do it" or "no, I" -- just ask if you did it, okay? Don't start with "this doesn't mean." Just ask in the positive, "did you do it." I pass that off for what it's worth.
Q Sir, do you recognize PX 3114 for identification?
Okay.
Q Do you recognize it?
I acknowledge this is an e-mail from me.
Q Do you recall seeing it before today?
I'm sure if I typed that the answer is yes.
Q The subject on the first e-mail is "easement analysis." Do you see that?
Yes.
Q nd it's from Sheri Dillon to you, Eric Trump and Donald Bender?
Yes.
Q nd you turn to the next page and -- I'm sorry -- the date on this is September 23, 2014; right?
Yes.

Q You turn to the next page title is "Potential Charitable Contribution nalysis." Do you see that?
Yes.
Q See Seven Springs is there?
Yes.
Q nd the valuation for the Seven Springs column is estimated in excess of 30 million. Do you see that?
Yes.
Q Did you have an understanding that the potential valuation for the easement donation for the Seven Springs property was in excess of $30 million in or about September of 2014?
I don't know much about the conservation easement. I really wasn't involved in that transaction. I don't believe they were referring to the entire property. I think it was a portion of the property that they were not going to develop, but then that's something I am not -- I am further from reality with.
Q In fact, did you understand that that amount was reflective of the value of a donation of the development rights for Seven Springs?
I don't -- again, I don't know what it's for. I wasn't really involved in the -- Ms. Sheri Dillon worked with Eric Trump on this conservation easement.
Q But you're copied on the e-mail?

I am copied. I may have been on a kickoff ball and after that that was the end of it, so I don't know exactly what took place regarding that conservation easement.
Q I wasn't asking if you knew what took place. I was just asking if you were aware or understood that that amount of the excess of 30 million was related to a donation or potential donation of the developments?
To a portion of the property. It wasn't the entire property. I don't know if your question is being phrased the way I understand it. I think there was a portion of the property they weren't going to develop and they were going to donate it as a charitable contribution and that's I think what this is about, not about the entire property with nine mansions and all that stuff. But, again, I'm talking about without having been part of most of these meetings that took place.
Q t this point in time they didn't have those nine mansions that we were talking about earlier on the property; right?
No.
THE COURT: I didn't really explain it that well. If somebody says you didn't do it, if you say no that could mean no, I didn't do it; it could mean yes, you're right I didn't do it. So ask it in the positive.
Q Did the development rights that you're just referring to include nine existing mansions on the property?

I don't believe so, but I don't know for sure.
Q Okay. Did the potential easement donation include the existing mansion and related buildings on the property?
I don't know.
Q You left that to Sheri Dillon and Eric Trump?
That's correct.
Q Let's turn back, if we can, keeping that to one side for the moment to PX 718. That's the rep letter for the 2014 SOFC.
Okay.
Q Do you have that document in front of you, sir?
I do.
Q That's November 7, 2014?
I do.
Q nd that's a little over a month, a month and a week or two weeks after that September 23rd we just saw; right?
Yes.
Q Documents on the left?
Yes.
Q So some point prior to this management rep letter you became aware of a potential charitable contribution relating to Seven Springs; right?
The one where Bender was copied on that e-mail regarding this?
Q Yes, the one that's on the left side of the screen.

Yes, but again, the e-mail that you showed me initially included Donald Bender as part of that meeting.
Q Yes.
Yes, we're talking about the same thing.
Q Yes. So prior to November 7, 2014 you're aware of that potential easement donation?
Potentially.
Q nd you're aware there was a valuation of that easement donation to be estimated to be in excess of 30 million; correct?
Correct.
Q Did you do anything at all between September 23, 2014 and November 7, 2014 when you signed that letter to determine what portion of the property would be covered by the potential easement donation that was estimated to be in excess of $30 million?
I did nothing. I don't know if Jeff McConney did anything.
THE COURT: If he asks if you did something just --
THE WITNESS: I did not.
Q Did you direct anyone to do anything between that time, September 23, 2014 and November 7th?
Regarding a potential --
Q Regarding a potential easement?
When it hasn't happened yet?
Q Yes, sir.

I did not.
Q nd did you direct them to do anything with regards to a potential valuation of that easement estimated to be in excess of $30 million?
I did not.
Q So you did nothing and didn't direct anyone to compare that valuation on the chart on 9/23/2014 and any valuation that might have appeared on the SOFC, did you do anything or direct him to do anything?
No.
THE COURT: That's much better than didn't you do this.
MR. SOLOMON: I am guided by the Court's direction.
Q Can we look at the Jeff Supporting Data, PX 7198, specifically lines 668 through 673?
MR. SOLOMON: nd, Your Honor, while we're waiting for that, I move to admit PX 317.
MR. ROBERT: Objection, Your Honor. I have several grounds for the objection. The first is that it's from 2014, so we have a statute of limitations defense.
Secondly, I know during the course of the special proceeding, which we weren't involved with, the Court made certain rulings as to attorney/client privileged documents, but I will note that not all the parties were defendants in this case were parties to the special proceeding, so we

would still object to the admissibility of this document under attorney/client privilege inasmuch as the document is marked subject to attorney/client privilege.
Third, this was a document that was just produced to us by the defendants -- by the plaintiffs, rather, for their use today over the weekend and the order requires one business day. I know Mr. Solomon said it was being used for impeachment. s I heard the testimony, it's not inconsistent. The question was was Mr. Weisselberg involved in the development and he was more focused on the financial side than the development side. So for those three bases we would object to those being introduced into evidence.
THE COURT: Should we discuss them one at a time? The statute of limitations objection is a standing objection?
MR. ROBERT: Yes, sir.
THE COURT: nd denied.
In terms of the attorney/client privilege, I think once it's out there in the world, you don't get to object on attorney/client privilege anymore. I understand that you would have if you had been part of the investigation.
In any event we looked at it and it's not his business, it's not attorney/client privilege. You can't privilege something just by claiming it's attorney/client privilege.

nd the third objection that you would have to discuss --
MR. ROBERT: The third objection is just of a matter to quote Mr. Kise, if we produce something the night before we're not going to stand on ceremony that it wasn't 24 hours. nd I appreciate the Court's ruling on the others. I just wanted to preserve the record.
THE COURT: nd Mr. Solomon?
MR. SOLOMON: Do I need to respond? It sounded as if he was just putting it on there to preserve his position if and when they intend to introduce --
THE COURT: Well, we're just talking about the third.
MR. SOLOMON: The third, very simply, Your Honor, we're using it to impeach the witness so that if he was not involved in the development or easement of the -- with respect to the Seven Springs property.
THE COURT: nd the document shows that he was?
MR. SOLOMON: We believe it does, Your Honor.
MR. ROBERT: gain, Your Honor, the question was about the development and it wasn't about the easement. Mr. Solomon's earlier question when he started to use the document and then they -- it was going to be used solely for impeachment purposes they wouldn't be using it saying they intend to use it today because under our stipulation and

order with you the documents for impeachment don't have to be exchanged.
So, again, the fact that they gave it to us yesterday, I'm just making the point that we do the same thing. nd as far as the rest of it, we understand the Court's ruling. We're just preserving the objection.
THE COURT: It's in evidence over two objections and one half objection.
MR. SOLOMON: Thank you, Your Honor.
Q Sir, if you take a look at this, line four, 668. 668 through 680. Do you see that?
668?
Q 668, yes. Do you see where the gray line is across?
Yes.
Q Okay. "Bedford seven mansions approved?"
In Bedford, yes.
Q If you go up to 666, apologies for that number, but that's where it is on the spreadsheet. "North Castle, land to be used as part of main mansion."
Was that the land you were talking about that the existing buildings were on?
I don't know the towns they're in, but there was a mansion already on the property. I do know that.
Q nd if you go up one more to 665, "New Castle land to be donated?" Do you see that?

I see that.
Q Okay. Now, the Bedford talks about seven mansions approved; right?
Yes.
Q Do you recall the SOFC talked about nine?
Yes. I see that there was numbers. I don't know if they're included in the main mansion as being nine, but I see seven here. So you're saying we undervalued the -- we should have added two more to this?
Q I'm asking.
I don't -- again, I didn't do this. I did not do this. This was Jeff McConney's spreadsheet, so I don't know what -- why you count seven, I don't know.
Q I was trying to understand if you could explain the apparent discrepancy between the seven and the nine. It sounds as if the answer to that is no?
I don't know. Maybe it shouldn't have been nine. He should have raised it. I don't know.
Q Should have raised it -- sir, do you recall that there was actually an appraisal done in connection with the donation of a conservation of Seven Springs?
I believe I was involved in that exhausting the fee that was going to be charged by Cushman & Wakefield may have done an appraisal for Sheri Dillon that she was going to use for the conservation easement. Yes, I remember that.

Q Okay. Do you recall the appraised -- withdrawn. Do you recall that Cushman & Wakefield performed that appraisal?
I believe so.
Q Cushman & Wakefield is a respected firm?
Correct.
Q Do you recall the evaluation they came up with for the entirety of the Seven Springs property, the portion in Bedford, the portion in New Castle, the portion in North Castle?
No, I don't know.
Q Would it surprise you to learn that it was in the area of 56 million for everything?
Yes. gain, I have no way to react to that.
Q There is no way to react? It's 291 million on this?
Correct.
Q nd I've -- there is an appraisal for the entirety of the property, including the mansions of 56, 56 and a half million. You have no way to react?
I don't know what the appraisal with everyone including. Were they including mansions, were they including this land. I don't know. I may have seen the appraisal, so for me to comment on that would be unfair.
Q You're the CFO -- you were the CFO, excuse me, at this time?
Correct.

Q You signed the management rep letters; right?
Yes, yes.
Q nd you don't recall if you knew there was an appraisal showing a difference of somewhere in the area of $230 million in the valuation of an asset?
Correct. I did not see that appraisal. I don't recall seeing that appraisal, no.
Q nd it wouldn't matter to you because that's less than five percent of the net worth of 6 billion; correct?
That wouldn't come into play. I don't recall seeing the appraisal.
Q The question is a little different.
Even if you hadn't seen the appraisal it wouldn't matter to you because $230 million difference is less than five percent of a net worth of $6 billion?
Well, I didn't look at the net worth that year.
Q So it was 6 billion -- if you saw a difference of $230 million you wouldn't tell Mazars, would you?
It's a yes-or-no question, sir. Would you tell Mazars if you saw the appraisal for an asset that you had previously identified at 291 million come in $230 million less?
I don't know how to answer the question. The reason why I don't because --
THE COURT: You don't know how to answer the question yes or no? Would you have told them if he was

seeing --
THE WITNESS: No. The answer is no.
Whereupon, the transcript continues on the following page....

Q Once you became a trustee, were you responsible for providing certifications to lending institutions as to the Statement of Financial Condition of the Trump Organization?
I believe so, yes.
Q Or the trust, I should say.
Yes.
MR. SOLOMON: Could we mark as PX 1386, this is a family of exhibits.
Q Sir, I will direct your attention specifically to page 39 of this exhibit.
Okay.
Q re you there, sir?
I have it.
Q Cover e-mail from Haroula Zapantis, do you see that?
Yes.
Q Is that person a senior accountant at the Trump Organization in or about 2017 or was that person?
Yes.
Q It says, "Please see attached report required per our loan documents for the above-referenced loan." Do you see that?
Yes.
Q nd the above reference loan is 40 Wall Street, loan number 28000723. Do you see that?
Yes.
Q Turn to the next page. Donald J. Trump summary of net

worth as of June 30, 2017, do you see that?
I do.
Q Go to the bottom. I, llen Weisselberg, certify that the above information is true, correct and complete and fairly presents the financial condition of Donald J. Trump and it is signed by you as trustee; is that right?
Correct.
Q That's your signature?
Yes.
Q The numbers here are derived from the Statements of Financial Condition, right?
I believe so, yes.
Q Well, you certify that it is true --
Yes. The answer is yes.
Q Why did you issue a certification?
I'm sorry. I don't understand the question.
Q Sure. You certified that this information was correct?
Okay.
Q nd it was then sent on to Wells Fargo, right?
Okay.
Q Is that right? Look at the cover page of the e-mail.
What page is that?
Q One page before, 39 of 230.
I'm sorry.
Q Take a moment.

39 is the Haroula e-mail.
Q Is the cover, "Please see the attached report required for per our loan documents"?
Right.
Q Did you send it or did you cause someone to send it to Wells Fargo to comply with obligations and loan documents.
I would say so, yes.
Q Did you understand that there would be a default under these loan documents if you failed to provide this certification?
I don't recall the covenants of the loan off the top of my head, whether they were cure rights or things of that nature that we could cure if there was an issue. I don't know the answer to the question.
Q Did you understand it would be a breach of a covenant under the loan documents if you didn't send this certification?
I would imagine so, yes.
Q Now, you certified that the information is true, correct and complete and fairly presents the financial condition of Donald J. Trump?
Correct.
Q You told me this information came from the Statement of Financial Condition, right?
Correct.
Q You also told us earlier today that the notes to a

Statement of Financial Condition are an integral part of that statement, right?
Correct.
Q You didn't send the notes, did you?
I don't know what was required in the loan document, whether they said we had to send the actual statement. We could have just done that easily. I don't know what the covenant said in the loan document.
Q Let me see if I can do this in the affirmative way.
Yes or no, did you send the notes to the financial statement?
No.
Q Please turn to page 41. I believe that's the same certification; is that right?
Yes.
Q nd page 42 is a new document from the same person on the same -- on November 7, 2017, right?
Yes.
Q On page 43 is another certification by you?
Yes.
Q Correct?
Yes.
Q That's being sent to the lender, correct?
Well, withdrawn.
That's being sent to Wells Fargo; is that right?

Is Wells Fargo the servicer of -- I want to give you an answer that I think will help you. The servicer, Wells Fargo, I don't know what loan they're servicing and every servicer requires different things to be sent to them. The loan documents say that as well. If a loan document said just send us a summary, then we complied with that covenant in the mortgage. If it says send us the Statement of Financial Condition, they would have gotten that.

Evidently, this loan indicated that they wanted a summary of a net worth, not the Statement of Financial Condition. Without seeing the document, I'm doing this purely from logic and memory, so if you had the loan document here and you could point me to what the covenant indicated, I would be able to answer the question better for you.

Q I think we can do it even faster without having you go through all the loan documents. You were sending this to Wells Fargo to comply with what you believed to be the obligations under the loan agreements, right?

Correct.

Q If you look at pages 44 and 45, similarly same date, being sent to Wells Fargo again, correct?

Same document over and over again. Same e-mail over and over again, all dated November 17th.

Q ctually, it is not. If you look at the subject, the loan numbers are different. On the first one, the loan number

is 723. On the second one, it is 920. nd on the third one, it's 213. Do you see that now, sir?

I do, and that's very helpful because each one of those loans, each one of those loans are, I believe, Ladder Capital and they required a summary of Mr. Trump's net worth. So, therefore, based upon what I believed to be the covenant, we provided the summary and not the Statement of Financial Condition with the notes.

Q nd did you believe you were required to provide this information to comply with the obligations under the loan agreements?

That's correct.

Q Let's turn to the next one at pages -- at page 86. Excuse me.

86, did you say?

Q 86 of 230, yes. The page before, document withheld for privilege, but we have a summary of net worth as of June 30, 2018. Do you see that?

I do.

Q Were you certifying as a trustee that the above information is true, correct and complete and fairly presents the financial condition of Donald J. Trump?

Yes.

Q Turn to page 92, please.

You said 92?

Q 92, yes, please. We now have October 25, 2018.

I'm sorry. I'm not there yet.

Q Sure.

I'm looking at the hard copy.

Q Yes. Do you have it?

Yes, I'm flipping through it now.

Q This is again referencing loan 28000723, but this is for October 2018. Do you see that?

Yes.

Q Did you provide the -- withdrawn.

Did you certify that the above information on page 93 is true, correct and complete and fairly presents the financial condition of Donald J. Trump as of June 30, 2018?

This is 40 Wall Street. Yes.

Q Did you understand that this certification was a requirement under the loan documents?

Yes.

Q nd that a failure to provide this certification would be a breach of the Trump Organization's obligations under that loan?

Yes.

THE COURT: Seven-minute warning. You only have seven this time.

Q Please turn to page 95 and 96. You'll see again it is a cover e-mail, but this time, it's for loan 0920 and you

certify again same thing, correct?

Correct.

Q nd did you understand that you were providing this to Wells Fargo to comply with Trump Organization's obligations under the reference loan agreement?

Correct.

Q Did you understand that if you failed to provide it, the Trump Organization would be in breach of its obligations under the loan agreement?

Correct.

Q Next document, page 97 to 98. gain, we have a cover e-mail, the last four digits of the reference loan is 0123. Do you see that?

I do.

Q Same certification, sir?

Yes.

Q nd did you understand that you were providing it in compliance with the Trump Organization's obligations under the reference loan?

Correct.

Q nd did you understand that if you failed to provide it or Trump Organization failed to provide this, that it would be a breach of its obligations under the loan?

Correct.

Q Please turn to page 131. Just to confirm, on all of

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those certifications, you signed as the trustee, right?
I'm not going to go back now, but I believe so.
Q If it says "trustee" under your name, you were signing as trustee?
I didn't want to go back and check them all. Yes.
Q Understood. Page 131.
Okay.
Q We are now in November of 2019.
Okay.
Q First, there is a cover e-mail. You see that?
From Patrick Birney.
Q To someone at midlandls.com. Do you see that?
Yes.
Q Is that Midland Loan Servicing, if you know?
I don't know.
Q Mr. Birney states, "Please see the attached report required per our loan documents for the above-referenced loan." Do you see that?
Yes.
Q nd up top under subject, there is an encrypt loan number. Do you see that?
Yes.
Q If you turn to the next page 132, you're certifying as trustee that the above information is true, correct and complete and fairly presents the financial condition of limited

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guarantor, correct?
Yes.
Q Were you providing this certification in connection with the Trump Organization's obligations under the loan documents.
Yes.
Q Did you understand if you failed to provide this, the Trump Organization would be in breach of one or more of its obligations under the loan documents.
covenant.
Q Or a covenant of the loan document?
Yes.
Q The next page is another certification by you?
Yes.
Q ctually or the same loan summaries, two copies were sent. Do you see that?
Yeah. I don't know why.
Q Can you, please, turn to page 142.
Okay.
Q The middle of the page, Mr. Birney indicates to Tiffany McCallop again at Midland LS that he is overnighting the report to you for delivery tomorrow. Do you see that?
Yes.
Q If you turn to page 146, is that your certification of the limited guarantor's summary of net worth for loan 030308089

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as of June 30, 2019?
Yes.
Q Did you understand that providing that certification was a requirement of the loan documents?
Yes.
Q nd that if you failed to do so, the Trump Organization would be in breach of one of the covenants under the loan agreements?
covenant.
Q Well, one or more, one or more?
Okay. I don't know how many covenants covered this, but okay.
Q t least one?
Yes.
Q Let's turn to page 148. We have from Patrick Birney this time to Wells Fargo. Do you see that?
I do.
Q nd he's attaching a limited guarantor under loans and there are four loan numbers, summary of net worth which appears on page 149. Do you see that?
Yeah. I just don't know what loan it is. There is just a loan number. I don't know what loan it is or what -- but -- what the covenant -- yes. Go ahead.
Q You certified the foregoing above information is true, correct and complete and fairly presents the financial condition

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of limited guarantor, right?
Yes.
Q nd you understood that was a requirement under the loan agreements?
Correct.
Q You understood it would be a breach of a covenant if you did not provide this certification; is that right?
Yes.
Q Turn to page 150, again, the cover e-mail. Do you see that?
Yes.
Q nd 151, another certification by you as trustee?
Correct.
Q That the above information is true, correct and complete and fairly presents the financial condition of limited guarantor. You see that?
I do.
Q Did you understand that providing this certification was required under the loan agreements?
Yes.
Q Did you also understand that it would be a breach of a covenant if you failed to provide a certification?
Yes.
Q Please turn to page 152. It is from Patrick Birney to Wells Fargo. Do you see that?

Yes.
Q nd you'll see attached on the next several pages is a certification -- all certifications by you that the foregoing information contained on those pages describing a summary of net worth of a limited guarantor under the reference loans as of June 30, 2019 is true, correct and complete and fairly presents the financial condition of limited guarantor; is that correct?
Yes.
Q Did you understand that providing this certification was required under the reference loan agreements?
Yes.
Q nd did you understand that a failure to provide a certification would be a breach of a covenant under the reference loan agreement?
Yes.
THE COURT: Want to break or you --
MR. SOLOMON: I will be guided by the Court's admonition that 3:20 was the right time.
THE COURT: s usual, I will take a 10-minute break over the next 15 minutes.
(Witness exits the stand.)
(Whereupon, a recess was taken.)
(Witness resumes the stand.)
THE OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: Very timely. Thanks. Please continue.
Q Mr. Weisselberg, let's talk about Trump Central Park South for a moment if we can.
Did there come a time that the Trump Organization sought a loan from Ladder Capital secured by either the residential or commercial units at Central Park South?
I believe so.
Q Was this in or around 2017?
I don't recall the year.
Q Do you recall that the principal amount of the loan was approximately $25 million?
Sounds about right.
Q Was this a short-term loan of one year or less?
I believe so, yes.
Q Do you recall the loan could actually be paid back in two months without penalty?
I don't recall the terms at all.
Q Do you recall it could be paid back earlier without penalty?
I don't recall.
Q Was the loan entered into -- was the loan entered into because the Trump Organization needed the proceeds from the loan to fund a settlement?
I don't recall -- you know, like every year's -- it's six years ago. I don't remember exactly why.

Q See if I can refresh your recollection. This was a loan with Ladder Capital, right?
Yes.
Q In fact, the person on the other side of the loan for a period of time was Jack Weisselberg, your son?
I don't know who Ladder dealt with then, if it was my son, maybe somebody else there. I don't know.
Q Did you have communications with Jack Weisselberg about this loan?
It's certainly possible.
Q Does it refresh your recollection if I were to tell you that the Trump Organization was waiting on certain sales of units, condominium units to close in order to obtain the funds it needed?
Sounds right.
Q Was the reason the Trump Organization needed the loan was because it did not want to use its own cash on hand at that time?
I don't recall the reason why, but I don't recall the reason why.
Q Was -- to your knowledge, was there a concern that the Trump Organization, that if it used its own cash on hand, it would breach its liquidity covenants under existing loans with other lenders?
gain, without having the numbers in front of me, I

don't recall.
Q Without the numbers, you don't recall one way or the other if the Trump Organization sought this short-term $25 million loan in order to avoid breaching its liquidity covenants under loan agreements?
I don't recall.
Q Doesn't sound familiar to you at all?
It sounds somewhat familiar, but I don't recall.
Q See if I can refresh your -- well, let's see if I can refresh your recollection.
Okay.
Q re you familiar with any situation in which you either had a concern or an issue with breaching the liquidity covenants under any loan agreement entered into by the Trump Organization?
re we going back ever?
Q 2011 to present.
Did I ever have a concern about breaching the liquidity requirements under a loan? I honestly -- possibly. Possibly. I just don't recall exactly specifically if I did or not, but it's possible. I don't recall.
Q If you don't recall specifically what about generally, do you have a general recollection that you had to take a short-term loan from Ladder in order to pay a settlement?
I recall the time that we had the apartments that we sold, they were contracted to be closed. I don't know what year

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it was. When you say 2017, that's certainly possible. I don't recall the year. Was there a concern about liquidity? Possibly.

Q So your testimony is it is possible that there was a liquidity concern over a $25 million payment; is that right?

Or we didn't -- or we chose not to use our own cash for another --

Q That's not my question, sir. You spoke about liquidity and you said it was possible, so I want to make sure your testimony is crystal clear.

Is it possible that there was a concern about breaching a liquidity requirement in existing loan agreements that caused the Trump Organization to obtain a short-term loan from Ladder Capital?

It's possible.

Q re you familiar with a partnership or partnerships that the Trump Organization has with Vornado?

Yes.

Q These partnerships own the buildings at 1290th venue of the mericas in New York; is that right?

Yes.

Q s well as 555 California Street in California, right?

Correct.

Q Do those partnership entities maintain bank accounts to your knowledge?

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I'm sure they do, yes.

Q Between 2011 and your departure from the Trump Organization, to your understanding, could the Trump Organization access any of the cash in the partnership accounts without Vornado's consent?

Not without, no.

Q To your knowledge, did the cash identified on Mr. Trump's Statements of Financial Condition between 2011 and your departure include the cash or his portion of the cash held in the Vornado partnership accounts?

I believe it did along with their portion of accounts payable as well.

Q Is accounting for in that way in a financial statement a proper way to account for it under G P?

gain, I'm not familiar with G P, so I would leave it up to Mazars.

Q s we saw earlier, you represented to Mazars that the Statements of Financial Condition complied with G P except as noted, right?

Based upon Mazars' --

Q Yes or no, sir. You made that representation to Mazars that the Statements of Financial Condition complied with G P except as noted; is that correct?

Yes.

Q Do you know Doug Parson?

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I never met him, no. I know the name. I never met him.

Q Who is he? You communicated with him; is that correct?

I don't know if I did directly or Jeff and Patrick did. He may have sent me an e-mail periodically. It's possible. I just don't remember.

Q Was he at Cushman & Wakefield at some point in time, to your knowledge?

I believe he was there and then I think he moved on to Newmark.

Q Did you ever have any discussions with him whether over the phone, in person, e-mail, any other form of communication concerning a valuation issue for any Trump Organization asset?

If I had a conversation, I don't recall it. It's over the many years. It's certainly possible we said hello to each other, but I don't recall speaking with him. That was pretty much in Jeff and Patrick's hands to deal with him.

THE COURT: But the question wasn't conversation. It was communication, which would be conversation, face to face, telephone, e-mail, text, et cetera.

THE WITNESS: Yes, your Honor. s I mentioned, there may have been an e-mail at some point to me. That's possible, yes.

MR. SOLOMON: Could we, please, mark PX 3110.

Q Let's take that down and come back to it in a moment.

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When Mr. Larson was at Cushman, did the Trump Organization, not just you, but the Trump Organization, to your knowledge, use his services?

I don't recall. I think banks -- banks who were providing funding -- to answer your question, I don't remember.

(Continued on the next page.)

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Q I imagine that you left Cushman at some point in time?
I believe so.
Q Do you have any idea when that was?
No.
Q You eventually went Newmark?
Yes.
Q To your knowledge did anyone at the Trump Organization use Mr. Larson's services when he was at Newmark?
Not that I'm aware of.
Q Let's talk a little bit about how the Trump Organization obtains insurance coverage.
During your time as CFO, let's say from 2011 until your departure, what was the process, if any, for the Trump Organization to either renew its existing insurance or obtain new insurance coverage?
So Ron Leiberman, whose name I mentioned earlier, he was in charge of our insurance and he dealt with ON. We'd have meetings periodically. It was a group of I think three or four of us who would listen to ON about what was coming up in the way we rules, what the market was like, where our premiums might be going, coverages, availability of coverages and then at some point it will come back with a program whether it was for liability insurance or for property insurance and -- or aviation and then we would make some decision as to which policy we would take.

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Q What about sureties?
Sorry?
Q What about sureties?
We had some sureties, not very much, I don't believe. Relatively small that I can remember. If we used to work on the golf course and they ask for a surety bond for a few bucks, we'd put one up. Nothing major.
Q You mentioned there was a group of people. Have you heard the expression, "a team of four?"
I did hear it. I don't know where it came from.
Q Did it come from someone at ON?
Maybe, yes. Yes, possibly.
Q Do you know who the four people are that were part of that group?
I was on it, Ron Leiberman, I believe Michael Cohen was on it, and Matthew Culimary (ph).
Q You mentioned you would meet with ON; is that correct?
ON with 13.
Q nd ON would act as the broker for the Trump Organization; is that correct?
Correct.
Q nd they would solicit bids from potential insurers; correct?
Correct.
Q Sir, this is an e-mail Martha Blackman sent on behalf

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of Pamela Newton. Do you see that?
Yes.
Q nd you are one of the recipients; right?
Yes.
Q February 14, 2013?
Yes.
Q nd you say, "Gentlemen, ON is committed to delivering to the Trump Organization the best service and the best results;" right?
Yes.
Q nd right under there writes, quote, "a team of four?"
That's where it came from.
Q I was going to ask you does that refresh your recollection?
Yes, I never heard it until -- yes, team of four, okay.
Q Was Pamela Newman the Trump Organization's representative at ON?
I think she was the point person.
Q So it's fair to say that the four of you, the team of four, were involved in dealing with ON?
I didn't deal with them other than to attend the meeting. Ron Leiberman dealt with them more on a day-to-day basis, but when there was a meeting we wanted to discuss our insurance program, then all four of us would come to those meetings. I would say for the most part Ron Leiberman was the

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one -- was the interface of the company with ON.
Q You were involved in coverage buying decisions?
We -- all the four of us were.
Q Were you involved in any other aspect of insurance coverage for the Trump Organization?
I am not sure -- it's a broad question. I'm not sure what that means.
Q Well, you will say there are different roles identified here and after your name it says "coverage buying decisions." Do you see that?
I see it now. I was focused over here.
Q That's all right.
nd you indicated that other people were involved in that?
Correct.
Q I'm just curious if you were involved -- since there may have seems to be overlap -- if you were involved in any of the other areas identified in this exhibit?
No. I wasn't involved in the claims or casualty of risk. That wasn't something that I did, no.
MR. SOLOMON: Can we move PX 3119 into evidence, please?
THE COURT: Granted. It's in evidence.
Q Now, did the existing insurers and sureties for the Trump Organization want to see annual financial statements?

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The insurance companies, meaning the ones that bought the property insurance and liability insurance?
Q Yes.
I don't recall them asking for it, no.
Q Do you recall if the sureties asked for an opportunity to review the financial statements?
The surety, yes.
Q In fact, as a condition of either retaining a new surety coverage, the sureties insisted upon it; is that right?
That I don't know, but we had meetings every year and I don't know who that was -- yes, I don't know whether or not that was a requirement. Ron Leiberman might know that it was a requirement, but when they asked me to attend the meeting, I would just go to the meeting with the Statement and review it with them.
Q Okay. You didn't give them a copy -- excuse me -- you didn't give the surety company a copy of the Statement of Financial --
No, we allowed them into the office to spend as much time to review it, yes.
Q nd they were allowed to make notes; right?
Yes.
Q Did you have any understanding as to why they wanted to come in each year and review the current -- or then current Statement of Financial Condition?

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I really don't know why.
Q Did you have an understanding that they would decline to renew your policy if you did not give them the opportunity -- let me rephrase that.
Did they require the Trump Organization to give them an opportunity to review the Statement of Financial Condition as a condition of renewing the policy?
If that were the case they would have communicated that to ON who would have communicate that to Ron Leiberman who would have asked me to go to a meeting with the Statement of Financial Condition.
Q When the sureties or representatives from the sureties came to your offices to review the Statements of Financial Condition were you present?
Yes.
Q Did anyone from any of sureties ever ask, either you directly or in your presence, whether there were appraisals from any of the assets identified on the Statements of Financial Condition?
Not that I can remember.
Q Did you ever come to learn that any of the sureties asked about the existence of appraisals from any of the assets on the Statement of Financial Condition?
I'm not sure I understand that. Learned from?
Q First question was in your presence?

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Oh.
Q The second was did you ever learn from anyone else that they had made that request?
I do not recall that, no.
Q Did you ever advise any of the brokers, insurers or sureties that you had appraisals performed by a third party for any of the assets on the Statements of Financial Condition?
I don't recall them doing that, no.
Q You don't recall. Is it possible you did?
No, he didn't.
Q Did you ever advise any of the brokers, insurers or sureties that you had valuations performed by a third party from any of the assets on the Statements of Financial Condition?
Not that I can remember, no.
Q Let's take a look at PX 1552. ctually, before we -- no.
MR. SOLOMON: I guess 3119 came into evidence already; right? It did?
Q Okay. Let's turn to PX 1552, please.
Sir, do you recall meeting with someone from Zurich Insurance in or about November of 2018?
We met with them manually, so I'm not sure the date, but we met with them manually.
Q Do you recognize the name Claudia Markarian?
I don't know who she is because the people changed

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every couple years, so if she was there on behalf of Zurich, I would say she was a representative, yes.
Q Do you also have in front of you, please, PX 773, which is the June 30, 2018 Statement of Financial Condition.
Now, sir, if you look at Ms. Markarian's notes and you go down to the "cash on hand," which is under the 11/28/2018, the third dash. Do you see that?
Yes.
Q Okay. nd if we turn to the Statement of Financial Condition assets page, please. You'll see Ms. Markarian notes cash on hand was 76.2 million. That matches exactly; right?
Correct.
Q nd she notes escrow funds were 22.7 million?
Correct.
Q Matches?
Correct.
Q Total assets, 6.6 billion. Do you see that in the next dash on Ms. Markarian's notes?
I'm looking. I'm sorry.
Q Sorry. If you look up on the screen, sir? It's highlighted?
Yes, yes.
Q nd if you look on the Statement of Financial Condition, 6.538, round it to 6.6 billion. So she is right again?

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Yes.
Q The largest property is Trump Tower at 732. Do you see that?
Yes.
Q nd on the Statement of Financial Condition Trump Tower first entry 732. So her notes are all consistent with the Statements of Financial Condition; right?
She is copying numbers from here, so she should be accurate.
Q She is right about everything; right?
bout that.
Q bout that, okay.
Now, she also states in the fourth dash, second sentence: "The fair value of the properties is determined by professional firms (such as Cushman & Wakefield) using cap rates and net operating income as factors." Do you see that?
Not correct.
Q It's not correct?
Not correct. s a matter of fact, if you look at a prior underwriter's report that is absolutely not correct.
Q So she is right about everything else except that?
Well, it's easy to copy numbers, but where she got that from, I don't know.
MR. SOLOMON: Let's mark as PX 1561 for identification, please.

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Q Now, this is another meeting note report from Ms. Markarian; correct?
I happened to glance down to the same area you mentioned before --
Q Okay.
-- with the appraisals.
Q nd she has cash on hand matches?
Yes, good copy job. She is copying numbers from there.
Q She got it all right for the numbers; right?
She copied the numbers correctly.
Q Okay. The fifth dash, second sentence?
Yes.
Q "The fair value of the properties is appraised annually by a professional firm. This year it was done by Newmark Group and has previously done" -- "been done by Cushman & Wakefield."
The reason for the change is the individual at Cushman & Wakefield with whom the organization had a longstanding relationship with moved to work at Newmark?
Correct.
Q Hence, Trump Organization continued to work with the same person for their property valuations. Do you see that?
That is work with the same person to gather the data, as I indicated earlier this morning, from Doug Larson to give us some summary of properties that was sold to get cap rates and be able to do comps. That's what we got from Doug Larson and he

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never did appraisals for us. We don't have any appraisals from him.
Q Did you tell Ms. Markarian that you were using someone at Cushman?
No. I -- it may have been Jeff. It may have been Jeff who is sitting in the same meeting or Patrick Birney that they were reaching out to Cushman, speak to Doug Larson to get this report every year. So we can take that report and be able to take it and to be able to value up partial properties.
Q nd Ms. Markarian was correct that the Trump Organization's person had moved from Cushman to Newmark; right?
Whoever dealt with her at the time, whether it was Jeff or Patrick Birney, probably told her that, sure.
Q You don't recall ever telling her that?
I don't recall telling her that, no.
Q Were you present when someone told her that?
I don't remember if it was Jeff or Patrick. When I -- my purpose in those meetings if you read her notes carefully it indicated that I spoke to her on the company on a broad basis; where the company was going, what it was doing, our debt that we had with her company, but when it came to discussing asset valuations, that I left to Jeff and to Patrick since they work on those. I never discussed that with her, no.
Q Were you present for all the conversations Jeff and Patrick had with Ms. Markarian?

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It was all purpose of the same meeting.
Q So were you there when they described to her how the assets were valued?
Yes, I was at the meeting and they told her that they called Doug Larson and Larson provided a summary of comps for downtown Manhattan or midtown Manhattan and he would take those -- Jeff would take those comps or Patrick would, valuations and cap rates and so on and then he would do his computation, but to say that we --
THE COURT: Finish, please.
To say that we got appraisals from them, that was -- I don't recall that conversation at all.
THE COURT: Can you read back the last question? nd listen carefully.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
THE COURT: That's a simple yes or no --
THE WITNESS: Yes, I was there.
Q Were you there when they told her that their person had left Cushman and gone to Newmark?
I don't know if he told her that then or later. I may have gone out for a minute, so it's possible I was sitting there at the time.
Q So is it possible when you went out for a minute, they told them -- they told Ms. Markarian they had valuations?

They didn't have valuation.
Q Wasn't my question.
Before you said you were in the meeting; now you said you may have stepped out for a minute?
No. The question you asked me was I there when they told her that Mr. Larson moved from Cushman to Newmark. I probably was sitting there when they said that, but is it possible they ran for a second to do something, it is.
But as far as valuation are concerned we have never gotten appraisals on our properties. We didn't have a reason to. If we were going for financing a bank would require that they would do it. We have no reason to go out and just arbitrarily spend hundreds of thousands of dollars, hundreds of thousands of dollars to appraise a property. For what purpose?
She is not a real estate person. She is in insurance business. She doesn't know a good appraisal property from something else, but we had no real reason to go out and get an appraisal. It was no purpose for it.
Q So now you're testifying about what you believe Ms. Markarian knows and doesn't know?
No. I'm saying she worked for an insurance company and I think don't know if she has the knowledge of real estate, but from what she's written here it just seems as though she does not. I'm not telling you she doesn't. I just want to read it.
Q You said you didn't get appraisals; right?

We did not get appraisals.
Q Did you have an appraisal for 40 Wall Street? In the Trump Organization's possession was there an appraisal for 40 Wall Street?
There was --
Q It's a yes-or-no question, sir.
MR. KISE: In what year are we talking about now? What year of this meeting are we talking about, in 2011?
THE COURT: The question is at anytime.
MR. KISE: t anytime.
MR. SOLOMON: The witness has testified we didn't get appraisals.
THE WITNESS: We didn't get -- we didn't hire anybody to get appraisals.
Q But did you have appraisals in your possession?
It's possible, but we never ordered an appraisal.
Q Let's talk about appraisals you had in your possession, whether or not you ordered them or came into their possession through some other means. Did the Trump Organization have appraisals in its possession?
If we had appraisals it doesn't necessarily mean we used them for any purpose. Well, if you want a yes-or-no answer, that's what you're looking for, the answer is I don't remember if we had appraisals. I don't recall at this point if we had appraisals in our office.

Q t any point in time did you have an appraisal for 40 Wall Street?
It's possible. I don't recall.
Q Did you have an appraisal for Seven Springs?
That was done for the conservation easement.
Q So the answer is yes?
Yes.
Q t some point in time do you recall obtaining a copy of an appraisal that was done for a lender on what was referred to as the Miami property?
I don't know what property that is.
Q Did you sign a lease to allow a lender to provide a copy of an appraisal to you for a property in Florida?
I may have. I don't recall.
Just so you understand, if I may? ppraisals basically is an art. It's not a science. n appraisal doesn't necessarily mean what the person preparing that appraisal is always perfect. History has proven that all the time because you can have a recession and three years before that no one could have thought of a recession and all of a sudden values that were projected to being X now became Y because nobody could predict the future and know what you know at the time, but again, it's an art. It's not a science.
THE COURT: Okay. There is no question.
MR. SOLOMON: Your Honor, move to strike as

nonresponsive as there was not even a question pending.
THE COURT: Granted. That whole speech is stricken. There wasn't any question.
Q I'll just make sure that my question wasn't too narrow. When I'm asking about appraisals the Trump Organization has, I'm including appraisals that may have been done by a bank but then subsequently came into the Trump Organization's possession. Did you understand my question to include those as well?
No, I didn't before.
Q Okay. Then let's go back.
THE COURT: I didn't either for the record.
MR. KISE: I didn't either. That's why I'm making my objection about time frame because it's very confusing. We're talking about a 2019 meeting. Does he mean at anytime in the 30 years?
THE COURT: I don't think we're talking about the 2019 meeting anymore.
Q Let's limit it to 2011, the time when you left the Trump Organization.
Did the Trump Organization have in its possession appraisals, whether or not ordered by the Trump Organization, a lender or some other third party?
It's a possibility we had some, yes.
Q nd did you or anyone in your presence advise

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Ms. Markarian that you had those appraisals?
Not that I can remember. When she was there we talked about a specific year. If it was a yes-or-no answer, it doesn't fit into the category. I'm sorry.
I don't mean to be disrespectful to the Court, but if he's talking about 2019 did I have an appraisal in 2018 or 2019, I don't think we did. If we're going back to an earlier year, maybe we're discussing 2019 right now. re you referring to a different time period?
Q I'm asking from 2011 to your departure.
Did we ever have an appraisal? We may have an appraisal a year after it was issued, possibly. Banks don't have to give it to you; it's their property. They -- we pay for it, but it belongs to them.
Whereupon, the transcript continues on the following page....

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Q Let's talk about Mar- -Lago for a moment. re you aware of any deed restrictions relating to the Mar- -Lago property?
I'm not familiar with the deed regarding Mar- -Lago. It happened many, many years ago. I don't -- I don't recall reading the deed. I may have had it in my file -- in my office. I never even looked at it. It's more a legal document that the lawyers in our office might have, but I never del- -- I never really delved into it, no.
Q Do you know if Mr. McConney was aware of any deed restrictions relating to Mar- -Lago?
I don't know if he did or did not. I don't know.
Q Do you know if Mr. McConney considered any deed restrictions with respect to Mar- -Lago when determining the value of the property for the Statements of Financial Condition?
I don't know.
Q But you testified earlier you relied upon Mr. McConney?
I did.
Q For the Statements of Financial Condition, correct?
Correct.
Q I'm going to go back to the Statements of Financial Condition for a moment. Once you became a trustee and Mr. Trump became president, who, if anyone, had final signoff authority for the SOFC's?
Good question.

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Q Thank you.
You're more than welcome. I don't recall how -- I think once the statement was complied, whether we went to Eric Trump and just showed it to him, I just don't remember what happened. It was a lot going on because the company changed how we do business because of Donald not being there. It was easier for me to walk into his office. I don't recall whether anyone had a final signoff on the documents. I don't recall.
Q t some point before you sent it to Mazars, you had to have a comfort level that it was complete and accurate, right?
That it was -- yes.
Q nd who made the final call that it was complete and accurate?
I don't remember. I don't remember when we -- whether Jeff went down to Eric and spoke to him or not. I just don't remember.
Q Donald Trump, Jr. was also a trustee, correct?
Correct.
Q For the statement of financial condition after Mr. Trump became president, those were statements that were done by the trustees; is that correct?
Statements done by the trustees?
Q It says the trustees have -- to the effect of the valuations have been done by the trustees in consultation. Do you recall that?

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No.
Q Let's open that up, PX 773. Do you recognize this to be the Donald J. Trump Statement of Financial Condition for year ending June 30, 2018?
Yes.
Q Turn to the second page.
Okay.
Q Very first line, the trustees of the Donald J. Trump Revocable Trust dated pril 7, 2014 as amended on behalf of Donald J. Trump are responsible for the accompanying Statement of Financial Condition as of June 30, 2018 and the related notes to the financial statement in accordance with accounting principles generally accepted in the United States of merica, do you see that?
Yes.
Q If you can turn to under real and operating properties, Trump Park venue. Do you see that?
Sorry? I'm looking at the hard copy.
Q Sure. Page seven, page 9 of 24 of the exhibit.
Yes.
Q You will see the estimated -- just for Trump Park venue as an example, the estimated current value of 175,700,000 is based upon an evaluation made by the trustees in conjunction with their associates and outside professionals of the amount that will be earned as a result of the sale of the remaining

condominium units as well as applying a capitalization rate to the stabilized net operating income to be derived from the commercial space.

Yes.

Q Does that refresh your recollection that the trustees in conjunction with their associates, outside professionals, others made a determination as to the evaluation that appears on the Statement of Financial Condition?

Those words took the place of Donald J. Trump.

Q So did the trustees do anything or did they just use the prior numbers?

Prior numbers?

Q In other words, it says the trustees made an evaluation, right?

The statement was prepared the same way every year if that's your question. But now, instead of Donald J. Trump and his associates and outside professionals, it now says trustees instead.

Q What, if anything, did you as a trustee do to determine the estimated current value of 175,700,000 as reflected in the document that we're looking at?

Same thing I did before. The CFO Jeffrey McConney and Patrick Birney arrived at values and I reviewed them.

Q Other than reviewing someone else's work, did you do any independent work?

No. I'm not a valuation person. I relied upon the people that I relied upon in the prior 25 years.

Q I believe you told me earlier Donald Trump, Jr. was also trustee at this point in time?

Yes.

Q What, if anything, did he do, to your knowledge, to determine the estimated current value?

I don't believe he did anything. It was -- it was done by the same people that did it for 25 years.

Q nd those are people you relied upon?

THE COURT: Ten-minute warning.

Yes.

Q Did Donald J. Trump have any familiarity with these people, to your knowledge?

People meaning --

Q Meaning the ones you relied upon.

Jeffrey McConney and Patrick Birney?

Q Yes.

Yes.

Q Do you know if he relied upon the same people you relied upon?

I believe he did, yes.

Q re those the associates that are referred to in this description in the notes?

long with others that may have worked with Jeff and

Patrick. There were people that got other information as I mentioned earlier this morning. Different parts of the statements were done by different people, so not just Jeff and Patrick, but it could have been some other people that submit information that Jeff and Patrick needed in order to finish the statement such as cash balances and things of that nature.

Q Did you discuss the Statement of Financial Condition before it was finalized with Donald Trump, Jr. for the years when you were both trustees?

I don't remember. I don't remember.

Q Do you know if Mr. McConney or anyone in his direction ever explained to Donald Trump, Jr. during the years he was a trustee how the values were calculated on the Statement of Financial Condition?

That is something you would have to ask him if he did it. I don't know.

Q Was it -- was that explanation ever given or description ever given in your presence?

Not in my presence, no.

Q Did you tell Donald Trump, Jr. during the time you were both trustees how the values were calculated?

Not that I can remember.

Q Do you know if Mr. McConney ever provided a copy of his supporting data spreadsheet to Donald Trump, Jr. when Mr. Trump was a trustee?

If he did, I wouldn't know about it. I wasn't there to see it.

Q Sir, we put back up and I asked you to look at the third page of the exhibit. That's the asset page. We were talking generally about the Vornado cash earlier. Do you recall that?

I do.

Q This was amounts that were held in the partnership accounts for the partnerships between the Trump Organization and Vornado, right?

Correct.

Q That's what we were talking about.

Just so we're clear, does that $76,200,000 number include any of the cash that's held in the Vornado accounts?

gain, if you can show me the spreadsheet that Mr. McConney put together, that might answer the question. It would help me.

Q s you sit here today, do you know --

I think it does, but I would like to be reassured by looking at the spreadsheet if you don't mind.

Q We can go back to that.

For the club facilities and related real estate, do you see that entry?

Yes.

Q 2.3499. To your knowledge, does that include future

development of any of those properties?
Yes.
Q Is the value of that future development for any of those properties discounted to present value?
No. I believe according to G P, we are allowed to use future value to value the asset this way. We relied upon the Mazars firm. They saw the spreadsheets. They saw the future value and they did not say anything about the number at all. Otherwise, it would have changed.
Q So now you're telling me you do know something about G P?
I know about G P as we discussed this morning, about what the personal statement versus a corporate statement. That's my limited knowledge of G P.
Q Well, you just told me that G P allows you to record that without having to reduce it to present value. You just told me.
What I told you was that Donald Bender and Mazars's firm who are G P experts, who are a CP firm, they know the rules of G P and they allowed future values to be put on this statement because they saw the spreadsheet from Mr. McConney and it showed future value. So based on that, I understand that you could use future value in order to be able to value assets on a personal financial statement.
Q nd it is your testimony that they saw future values on

the spreadsheet; is that right?
I -- again, without having the spreadsheet in front of me, that's all Bender would have had in front of him.
Q Well, you just said they saw the spreadsheet.
Yeah. Yeah, because Jeff gave them every spreadsheet. Whatever they wanted, Jeff will give it to them.
Q Is it your testimony that those spreadsheets indicated that those were future income streams?
I believe -- I'm trying to recall without seeing the spreadsheet in the words that are on there. I believe so.
Q But you, sir, on behalf of the Trump Organization up until when Mr. Trump became president and then as a trustee certified or represented to Mazars that the statements complied with G P you did that, right? Yes or no?
Yes.
Q Mazars didn't certify to you that they were complying with G P, did they; yes or no?
Yes.
Q Yes, they did?
Rephrase your question.
THE COURT: Perfect example.
MR. SOLOMON: Yes.
Q Did Mazars certify to the Trump Organization that the Trump Organization's financials complied with G P?
Mazars would not have released a statement if it did

not comply with G P because they were the G P experts.
Q nd they were -- withdrawn.
It was represented to them that those statements complied with G P by you, sir; is that right? Yes or no?
Represent in a letter that they prepared for me to sign.
Q The management representation letter from the Trump Organization to Mazars, right?
That was prepared by Mazars.
Q nd you signed it?
That's correct.
Q nd you gave it to Mazars?
Correct.
Q nd you knew that they wouldn't have issued the SOFC's without them, right?
I knew that they -- the answer is yes.
Q Thank you.
Right.
MR. SOLOMON: Your Honor, it is 4:29.
THE COURT: You're really pushing it, aren't you, Mr. Solomon?
I think unless there is something else, we will come back tomorrow at ten o'clock.
MR. SOLOMON: Your Honor, could we have an instruction to the witness to not discuss his testimony with

counsel during the evening break?
THE COURT: Okay. He can't discuss it with anyone.
Mr. Weisselberg, don't discuss this case, your testimony or anything about it with anyone.
THE WITNESS: I won't.
(Witness excused.)
(Whereupon, the trial was adjourned to October 11, 2023 at 10:00 a.m.)

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In The Matter Of:

NYS G v.

Donald Trump, et al.

Nicholas Haigh

October 11, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

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Min-U-Script® with Word Index

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

60 Centre Street
New York, New York 10013
October 11, 2023

B E F O R E:

HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

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Senior Court Reporters

N. Haigh - Petitioner - direct (Wallace) Page 973

THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding.

Make sure all cell phones are silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Tommy, do you want some hot tea after that?

Thanks for being here. Of course I don't read the papers and go online and look to read about this case, but there is some issue that keeps coming up: there is no jury. It's not just because we need a box for the screen there. s the lawyers know and the lay people may not, there is law and then there is equity.

In law, generally legal cases are about money damages; equitable cases are about injunctive relief, telling someone you can and can't do something. nd here's how it's determined whether there is a jury or not. When -- either side, any party can file a Note of Issue saying that disclosure is finished and the case is basically ready for trial, the person who files that Note of Issue checks off a box, says they want a jury trial or they don't want a jury trial. That's assumed to be the case, but the other side has I think it's 15 days or so to object and say no, we

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don't want a jury or no, we want a jury and then it's up to the judge to decide is this a legal case with a jury or an equitable case with no jury.

I believe what happened here is the ttorney General clearly checked off nonjury and there was no motion to -- for a jury, but my research and llison's research told us that all the relief requested here was equitable. So it would not have helped to make a motion. Nobody forgot to check off a box. We're having a nonjury trial because this is a nonjury case, sometimes called a bench trial. That's why I'm sitting up here.

Would anybody like to correct me or comment on that?

MS. H BB : I would like to say thank you, Your Honor.

Press, did you hear that? I didn't forget to check the box.

MR. W LL CE: Your Honor, I would just add that actually in New York practice unlike, say, federal practice, the Court is to determine what the weight of the claims are and so that it will not have a divided jury and trial claims the way you might in federal practice and that if the relief is primarily either equitable or legal is what determines whether there will be a jury or not. We do not in state practice have the opportunity to divide trials as you might

in federal practice.
MS. H BB : Thank you. nd we did discuss it on March 3rd and we discussed this exact topic, but thank you, Your Honor. I appreciate it.
THE COURT: Sure. We're all learning.
MS. H BB : Yes.
THE COURT: Okay. I understand that there is an attorney that would like to address the Court and everyone else about the next witness?
MR. ZENSKY: David Zensky for the record.
I'll be brief. Good morning, Justice Engoron. David Zensky of kin Gump Straus Hauer & Feld, and we are counsel for Deutsche Bank.
s the Court knows, today's witness is being called to testify about events that occurred while employed at Deutsche Bank in the credit risk management area. I appeared in court today for the limited and almost certainly unnecessary purpose of protecting against the disclosure of Deutsche Bank's -- information protected by Deutsche Bank's attorney/client or work product privileges and/or to prevent the disclosure of information that is confidential, supervisory information which the bank is obligated to keep secret under federal and state regulations.
I've consulted with counsel for all parties and no one has an objection to being heard on an issue should it

arise, but no one believes that such an issue will arise, so I'd simply ask the Court for permission to be recognized of need be.
THE COURT: Okay. How should we do this logistically? Do you want to sit towards the front and raise your hand if there is an issue?
MR. ZENSKY: Whatever suits the Court. I'm happy to sit where I was. gain, it's unlikely to occur, but whatever the Court believes is appropriate.
THE COURT: Well, you can be on the 30-yard line and the 50-yard line. Why don't you sit in the front bench, if that's okay?
MR. ZENSKY: Okay, that's fine. I do likely like the 50-yard line, though.
THE COURT: That's what I say.
MR. ZENSKY: Thank you, Your Honor. I appreciate it.
THE COURT: Plaintiff, are you ready to call your next witness?
MR. W LL CE: Certainly. The next witness People call is Nicholas Haigh.
THE COURT: I control a lot but not the music coming from the plaza out there.
THE COURT OFFICER: Witness entering.
(Whereupon, the witness enters the courtroom and

approaches the witness stand.)
THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?
THE WITNESS: Yes, I do.
THE COURT OFFICER: Please have a seat.
State your name and either business or home address on the record.
THE WITNESS: My full name is James Nicholas Haigh. My home address is 712 Seney venue, Mamaroneck, New York, and I am currently retired.
THE COURT: nd I'll ask the witness to speak loudly, slowly, clearly. nd these microphones are very particular; you have to be really close to them.
THE WITNESS: I apologize.
THE COURT: Please proceed, Mr. Wallace.
DIRECT EX MIN TION
BY MR. W LL CE:
Q Good morning, Mr. Haigh. I believe we met at your deposition, but my name is Kevin Wallace. I'm an attorney with the New York ttorney General's Office.
Just at the start, can you describe your educational background for the Court?
Yes. So I grew up in Brittain high school. I went to

university or college at the University of Manchester between 1975 and 1978. Then I trained as a chartered surveyor and qualified as a chartered surveyor I think in about 1981.
Q nd what does it mean to be a chartered surveyor?
It's a professional qualification in the UK and some of the other commonwealth countries around real estate.
Q Okay. nd what kind of tasks with someone who is a chartered surveyor undertake in relation to real estate?
So I was a general practice chartered surveyor. So we did all sorts of things from landlord and tenant negotiation, acquisition of real estate, purchase, looking at appraisals, doing appraisals or valuations that they tend to be called over there.
I worked for a government, local government for awhile and -- actually, no. It's for the national government but in a local area. nd for one of the utility companies and then I worked for an investment fund running a pension fund, acquiring real estate assets for their pension fund. nd then I moved to a U.S. bank and gave advice to some of their clients in real estate in Europe -- in the UK.
Q I believe you just stated that you're currently retired; is that correct?
That's correct.
Q What was your prior job before you retired?
The previous four years I have worked for Bank of

merica as a -- what they called a credit officer, but I was making loans to private clients and their private clients' business.

Q nd what sort of work would you do as a credit officer at Bank of merica?

-- Bank of merica.

It involved talking with clients about the bank's various credit products; it involved looking at clients' financial positions to assess whether they qualified and were suitable for those credit products; it involved negotiating with the bank's internal risk approval people and underwriters around how to underwrite a client document and their financial position, negotiate loan terms, if necessary, and so that was mostly what it was.

Q I believe you said working -- sorry. Underwrite loans and helping work through them documenting their financial position. Could you just describe what that entails?

Bank of merica had an underwriting process where it would analyze the financial condition of its potential and actual borrowers and it involved looking at the client's financial information capturing that in a very standardized way and analyzing that information to then use all that information in order to derive a risk rated score for its client's probability default.

Q nd that would help govern the terms of the loan they

might be eligible for and able to obtain?

Yes, so that would -- indeed it would perfect all of those matters.

Q So before you began at Bank of merica what was the position you held prior to that?

So immediately prior to that I was employed on a part-time basis by a consulting firm who provided services to Deutsche Bank and I was working for that firm part time for about four months or three and a half months within Deutsche Bank's private wealth management business line -- not business line but with supporting their group.

Q Just so I'm understanding that the consulting firm you were doing work for you in the process of providing consulting services to the Deutsche Bank private wealth management group; am I understanding that correctly?

Correct.

Q nd so before that consulting position what position did you hold?

So prior to that I had been the risk officer for the head of risk for Deutsche Bank's risk group covering their private wealth management business.

Q nd what was your title in that position?

I was a managing director of the bank.

Q nd how long did you hold that role?

I held that role from mid 2008 until the end of 2018.

Q nd was mid 2018 the time you left Deutsche Bank?

End of 2018 I was -- I left Deutsche bank.

Q nd why did you leave Deutsche Bank in the end of 2018?

My -- my employment was terminated.

Q Do you know why it was terminated?

I believe it was for cutting -- cost cutting reasons.

Q Were you told anything about the reason in particular, though?

No other than just generally the cost cutting environment that the bank was in.

Q t the time of your departure from Deutsche Bank how long had you been working with the company?

So I had been working for Deutsche Bank or for Banker's Trust which Deutsche Bank bought. I joined banker's Trust I think in 1990 and I had taken one year off but apart from that one year off the whole rest of the time I've been working for either Banker's Trust until 1999 and then Deutsche Bank until 2018.

Q So going back to your role at credit risk management. If I could just focus on the period from 2011 through mid 2018, what were your responsibilities as the head of credit risk management?

So I was the head of credit risk management covering the private wealth management business under whatever name it was going by at the time and I ran a relatively small team of

people. Our job was to do the policy work and the credit approval work around any credit exposures that the credit wealth management group was taking.

Q You mentioned the private wealth management business. What is that business? Could you describe it for us?

It's the division of Deutsche Bank that was serving high net worth individuals and providing various products to them, including credit products.

Q nd so you mentioned it was your job to examine the credit exposure. Could you just describe for us the sort of -- what are you doing when you're looking at that exposure?

So in very broad terms we're assessing the risk profile of a client in order to come up with an accurate risk rating, risk assessment of that client and also we are looking at the entire proposal for that -- the entire credit proposal to make sure it fits within the desired risk profile of the bank.

Q nd so are you approving the credit decisions?

Yes. We have the final -- the final approval on all credit decisions for those clients.

Q So I'd just like to go through a few of those. How would you go about assessing the risk profile of the client?

We based our assessment of the risk profile of the client on their financial position, so we would look at the financial data that we had on the client typically from some sort of statement of financial condition, supplement it with

things such as validated and verified statements of -- from banks, from brokerage accounts. So we'd capture information about their financial position in a spreadsheet format and that information would then be used in our risk rating methodology to assess certain characteristics of that borrower -- financial characteristics mostly, but some other characteristics as well -- to assess those characteristics and that -- that was a mathematical model that generated a risk score that mapped to a probability default for that borrower.

Q nd the -- that probability default that would generate what kind of loan the customer would be able to obtain from the bank?

Not specifically the type of loan that a client could obtain, but it would inform whether we were willing to do a loan at all and it would have an impact on the size of loan we were willing to do for that client and also the terms of the loan that we were willing to do for that client.

Q Okay. I believe you also mentioned that you prepared a proposal for credit. Is that similar to the type of terms that might be available to the customer?

So the bank would have a credit memorandum and that memorandum would endeavor to capture all the relevant information that you need to make a decision about that credit. So it would cover things from short summary of who the client is, why they want the money, what the terms are of the

transaction and then it would also summarize their financial condition and attach to that credit memorandum would be our assessment of the risk rating of the client.

Q nd so that memorandum would spell out the terms of proposed transactions?

Yes, yes.

Q nd what are some of the factors in how a transaction would be structured that would affect the credit assessment that you and your team were making?

I'm pausing because it's kind of a broad question. There are -- I mean, many factors could affect it. So the first sort of given would be that the client was a client of the private wealth management business under their profile fitted what the bank wanted to do.

nd secondly, would be the question of does the credit they want fit what the bank is comfortable in doing. So is it, for example, a real estate loan we're comfortable with.

nd then maybe other client-specific factors driven by their financial condition or reputational matters or other matters that might gather the specific terms of the transaction.

Q You mentioned that one example of a loan that might be a real estate loan. Would those loans include, for example, collateral, those things might be apart of the assessment obtained?

Yes, many of our loans have collateral.

Q nd how would that affect the credit analysis that your team is performing at a high level?

So we would -- part of the analysis would include an analysis of the collateral. So what's it worth today? nd do we like it in the sense of is it good collateral that will sustain its value in the future.

Q nd what would constitute good collateral that would sustain its value in the future?

I mean, there were a number of different types of collateral a bank frequently took; commercial real estate, residential real estate, fine art, marketable securities, airplanes.

Q nd how would you assess the -- what's good collateral versus some other kind of collateral?

Well, in general terms -- in general terms, the point of collateral is to have a legal entitlement over an asset that if the loan defaults the bank can obtain title to that asset and effectively sell it one way or another. So that really drives what's good collateral and that is is there a market for that asset? Can it be sold? re there any legal impediments? Can we deal with those and what's likely to happen to the value of the asset between the day when we make the loan and at some point in the future when we might need to take that asset and sell it.

Q nd so how easy it is to take that asset and sell it is

what would make one piece of collateral superior to another one is that the --

That's part of --

MR. ROBERT: Objection. Leading.

THE COURT: Sustained. Stricken.

Q So how would the factors you were discussing affect your view as to whether or not collateral is good?

So first of all, I think I mentioned whether we could sell the collateral so that do -- you know, is there a deep market for that type of collateral? Do many people buy it or is it a specialist type of collateral, which only a few people would buy and it might have a much thinner market.

Secondly is a question of the volatility of the value of that collateral. Some types of collateral go up and down in value more than others and that would be a -- of importance to us.

Q So going back to your time in your credit risk at Deutsche Bank could you walk us through what the process was for how a client would obtain a loan through the private wealth management group?

Sure. So the client would have a marketing officer called a relationship manager within the private wealth management business. They would interface with the client. Within the private wealth management business there was also a group of product specialists that we called lending officers and

their focus was on loans. So when a client wanted a loan, a relationship manager would interface would speak with the lending officer about what kind of loan the bank normally does and when they realize it was business to be done that there was a loan a bank would do, the lending officer was comfortable, it would fit into their portfolio of assets, they would document the proposed terms of the loan in a credit memorandum and that would come to my team for final approval. There may have been a bit of an iterative process prior to that where the lending officer spoke with members of my team about specific aspects of the transaction so that they would want to know that we at risk management were comfortable with those specific issues. But the memo would be prepared, it would come to my team for approval and then if we'd signed off on it, the loan would then move to be documented and finally being booked by the bank.

Whereupon, the transcript continues on the next page....

Q You mentioned that lending officers would make the decision as to whether the loan fitted with their portfolio aspects. What is entailed in that analysis? What are they looking at when they're making a loan?

Well, a lending -- I mean, the lending group is part of a business line that they're there to make money. They have a whole a number of products that they typically -- typically that's sold, if you like; loans, let's say for example, commercial real estate loans or residential real estate loans. So they had a number of products that they would typically sell and they wanted to make sure that they were taking the right risk profile for that business because they would carry any losses and they wanted to make sure that they were appropriately profitable because their business line was charged for the capital that they were using.

Q nd a loss would be that if a loan doesn't pay, the loss would be on their books?

Yes.

MR. ROBERT: Objection.

THE COURT: Sustained.

Q So whose books would the loss go on?

So the profit and the loss account belonged to the business line. In this case, private wealth management.

Q So in the process, you were describing your group, the credit risk group, would be the last one to sign off on the

proposal; is that correct?

Yes.

Q Did credit risk management need to sign off on the final loan terms before a loan could be originated?

MR. ROBERT: Objection.

THE COURT: Sustained.

Q Did you have --

THE COURT: Let me just mention this whole objection/sustained. You can't ask leading questions, "leading," questions that suggest an answer. There is an exception for introductory material, but now we are getting into the weeds. You can basically ask him how does it all work or how does this particular thing work or that particular thing. You can't put words in his moth and then say is that the way it works.

Q So what did your group need to do before a loan could be originated?

So my group needed to sign off on the credit memorandum that I mentioned earlier. So we needed to be comfortable with the terms that were contained in the credit memorandum, so we were willing to sign off and approve it. nd without our approval, the loan operations area would not book any loan and typically the credit memorandum would be sent to our legal counsel, external legal counsel who were documenting any loan.

Q nd who within the credit risk group would do that,

provide authorization?

There are a number of credit officers in my group and each one had different levels of credit authority delegated to it by the bank's chief risk officer. It was a process of delegating credit authority. There were limits on that credit authority that reflected the size of the loan and the risk rating of the counterparty.

Q nd so did you have credit authority?

I did.

Q nd what was the level of your credit authority?

Well, it varied depending on how risky the client was, so for the least risky client, I seem to remember it was 500 million euro, but that fell rapidly when you -- when we got down to clients who were non-investment grade and I think the low investment grade was more like 15 million euro. I don't remember precisely.

Q Mr. Haigh we're going to hand you a document that has been marked as Plaintiff's Exhibit 293.

Mr. Haigh, would you just take a moment to familiarize yourself with this exhibit.

Okay.

Q Do you recognize this document?

Yes.

Q What is it?

This is a credit memorandum for the transaction

covering golf course resort hotel in Miami.
Q nd if we just look at the top corner here under beneficial owner, it says Donald J. Trump. Do you recognize him as the -- what is his role in that transaction?
So he is the beneficial owner of the legal vehicle that owned golf course, so resort. nd he was also a guarantor, a personal guarantor on the transaction.
MR. W LL CE: If we could just turn quickly to page five.
Q Do you recognize your signature on the far right-hand page here?
Yes, that's my signature.
Q What is indicated by your signature there?
My approval of the transaction terms contained in the memorandum.
MR. W LL CE: Your Honor, we'd ask that this document be entered into evidence.
MR. ROBERT: Objection, statute of limitations.
THE COURT: Overruled. I will consider it a standing objection. Overruled. Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 293.)
Q Is there any significance to your signature being on the far right?

I think the convention of Deutsche Bank was to arrange the business on the left, credit officers on the right, and then I think in the States, we went from left to right in terms of seniority, but that wasn't written down anywhere that it had to be done that way.
Q So you were the most senior credit officer signing this document?
That's correct.
Q nd does that mean you are the credit officer approving this document?
Well, Sean Harrigan is the other risk management officer and we together were able to approve the document.
Q If we go back to the first page, I just would like to walk through some of the top. Can we see it says PWM regional and there is a checkmark there. What's indicated by that notation?
I think it means that it needed to be approved the PWM regional level wherein the United States.
Q nd that was -- is that the region you were working in?
Yes, I was in the United States. Yes.
Q Down below, there is a checkbox next to new request. What's indicated by that?
new credit request. We didn't already have a credit for this -- for this borrower.

Q nd is that based on the borrower or the loan that's being paid?
You know, I'm not sure I remember exactly the rules. If we already had a credit for this borrower, we would have checked the increase box and if it was just an annual review of our existing credit with no other changes we would have checked the review box. So this reflects that, in fact, this was a new credit. It would be a new asset for the bank.
Q The box next to that under borrower, it says, "TBD [SPV acceptable to the lender end bracket]." What does that indicate?
So it stood for "to be decided." Then in parenthesis, special purpose vehicle acceptable to the lender.
Q Is there a reason there is not a specific borrower designated yet?
I think the reason would be that either we did not know the specific legal name of the legal vehicle that it would be or maybe that vehicle still needed to be set up and yet didn't exist.
Q But you were able to approve the loan without a specific vehicle having been designated yet?
Yes, we did.
Q If we go back to the box that has Donald Trump as the beneficial owner at the top, there is a line or two below, it says, "REL manager. It states, "Vrablic/Scalzi." What is

indicated by this line?
It stands for relationship manager and the chief relationship manager for this relationship was Rosemary Vrablic and her partner is Dominick Scalzi.
Q nd I think you described it at a general level, but what role did they play in this transaction?
They were responsible for handling communications with the client, providing services to the client of all the services that the bank offered.
Q If we go two lines below, which states C manager, the name Sullivan after it, what's indicated on this line?
I think it stands for account manager. Tom Sullivan was the lending -- the senior lending officer from the business line on this relationship.
Q nd you described it at a high level. What role did Mr. Sullivan play in this transaction?
So his group was responsible -- it was their credit portfolio. He was responsible for making sure that they made loans on terms that they were comfortable with.
Q nd you had mentioned, I think, that it went on -- the profit and loss went on someone's balance sheet.
Is Mr. Sullivan then the person that had the profit and loss on his balance sheet?
He wasn't the head of that group, but he was part of that group.

MR. ROBERT: Objection. Objection to leading, your Honor.

THE COURT: Can you rephrase the question, so it is not leading.

MR. W LL CE: Sure, your Honor.

Q Was there anything significant -- I'll just withdraw the question.

The next line states "supporting" and lists the name Stafford. What role -- what is that identifying? Or actually, can I just clarify on the document? Is it supporting lenders and there are two names? Is that how this should be read?

That's right.

Q So the line states "supporting lenders." It says Stafford/Schroeder. What's indicated by that line?

Those two officers worked for Tom Sullivan and they were part of the lending group. They were lending officers within the bank.

MR. W LL CE: If we could scroll down on this document a little bit.

Q The box here states collateral. The first paragraph reads, " first mortgage lien and a first priority security interest in the Doral Golf Resort and Spa located in Miami, Florida, (the resort), including the borrower's fee, simple estate, all personal property, leases, rents, revenue, operating accounts, reserves and all other related assets."

What's being indicated in this section here?

So it's right at the start of this credit memo. It is giving us an idea of the collateral that will be provided for the loan.

Q If we look at the next paragraph in the middle, there is a sentence that begins, "Based on the $150 million cost, our initial LTV will be 83.3 percent. However, borrowing under the facility will be equal to the lesser of; i, 125 million; and ii, up to 85 percent of the appraised value subject to the satisfactory review of DB's Valuation Services Group. I'll stop right there. Just ask you to identify what's meant by a few words. What's LTV?

LTV means loan to value.

Q So I think loan is the value of what?

The $150 million. So 83.3 percent, our loan would be a loan up to $125 million would be 83.3 percent of $150 million.

Q nd where it says "the facility," what is that referring to?

The credit facility.

Q nd so ii states that it is subject to the appraised value -- actually, let me rephrase that. Up to 85 percent of the appraised value subject to the satisfactory review of DB's Valuation Group Services. Why is there a requirement to obtain an appraised value?

This is a loan collateralized with commercial real

estate, so there is a requirement from the bank to get an appraisal -- an independent appraisal on behalf of the bank of the value of the collateral real estate.

Q So because the real estate is the collateral for this loan, the bank has an obligation to get an appraisal? m I stating that correctly?

MR. ROBERT: Objection.

THE COURT: We are getting to the point of the witness says something and the attorney is asking is that what you were meaning.

MR. ROBERT: He's trying to clarify it, so Mr. Wallace is testifying. This witness is certainly capable of answering questions.

THE COURT: Mr. Wallace, is there another way around this?

MR. W LL CE: I think it was an appropriate clarifying question. I did not suggest what the answer would be to the witness.

THE COURT: Well, you suggested what you think he was really trying to say, right or something that like a simplified version of that.

Q So why is the appraisal necessary? Could you, please, restate that?

ll loans secured on real estate require an independent appraisal commissioned by the bank.

Q nd are appraisals required on loans that are not secured by real estate?

For loans that are not secured by real estate, appraisals are not required by regulation in all cases; but sometimes by bank policy, they are required.

Q Go to the bottom of this section, it states, that "the facility will also be supported by a full and unconditional guarantee provided by DJT of little one, principal and interest due under the facility; and two, operating shortfalls of the resort. It being understood that borrower shall be permitted to utilize all revenues from the resort to operate the resort to reduce the amount of such shortfall."

First, who is DJT has referenced there?

Donald Trump.

Q Can you explain for me what Mr. Trump is guaranteeing here?

He's guaranteeing that he will repay our loan, all the monies due under the loan under Roman one; and under Roman two, he's also guaranteeing that if the resort is not -- is losing money, he will pay the cost of that shortfall.

Q If you look at the sentence just below, it states, "for collateral monitoring purposes, the facility is being underwritten as other secured." What does that mean?

It's a categorization of a type of collateral that we have.

Q nd what does it mean that it is other secured?
So it means that it is secured in that we have collateral and the other box is because -- or the other descriptor is because the type of collateral didn't fit cleanly into the typical types of collateral that the bank took.
Q Mr. Haigh, when you say the bank, are you talking about your group or Deutsche Bank writ large?
I'm talking about the private wealth management business.
Q Why isn't the Doral Golf Resort & Spa collateral that the bank typically took?
lthough the collateral was commercial real estate in the largest sense of those words, the specific use of the collateral as a golf resort and spa is a specialist use that was not a typical type of collateral that the wealth management group took for its loans.
Q nd did that fact have any impact on how you analyzed this potential credit?
Yes, it's relevant to how -- to the analysis of the credit.
Q nd how would it be relevant?
It's relevant because it affects the ability of the bank in extremis to sell the collateral. golf course, golf resorts are relatively uncommon compared to other types of commercial real estate and the number of buyers for those

resorts is more limited, and so it would most likely be harder for the bank to sell should it have to foreclose on the collateral.
Q You mentioned earlier, you said something about the bank acting in extremis. What did you mean by that?
I meant by -- in extremis, I meant should the bank face a default where it had to try and foreclose or in some other way take ownership of collateral.
MR. W LL CE: We can take down this segment, but if we could flip to the third page.
Q There is a box up top that states, "repayment sources, key risks and mitigants." It lists a primary source of repayment, a secondary source of repayment and a tertiary source of repayment.
I would like to direct your attention to this section, tertiary source of repayment. It says, "full and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidating collateral."
What does it mean that the guarantee was a tertiary source of repayment?
So when a bank is making a loan or Deutsche Bank is going to make a loan, it wanted to identify the likely ways it was going to get repaid and the third one, the tertiary one in this case, was a way of the bank getting repaid that they are not relying on the collateral itself as the source of that

repayment.
Q Did the fact that it was the tertiary source of repayment have an effect on your credit analysis?
No.
Q Is the fact that a tertiary source of repayment, does that mean it is less important than the other source of repayment that's listed?
No, it is not less important.
Q If we look down at the next box, it states, "recommendation" and it reads, "The facility is being recommended for approval based on financial strength of the guarantor. The financial profile of the guarantor includes on an adjusted basis, 135 million in unencumbered liquidity, 2.4 billion in net worth and approximately 48 million in adjusted recurring net cash flow."
Is there any significance to this being a first basis for approval in this segment?
I think that indicates that it is significant -- those are significant facts in the analysis of the risk.
Q The next item listed, it states, "Nature of the guarantee. The nature of the guarantee which includes both principal and interest along with operating expenses of the resort."
What was it about the nature of the guarantee that made it a basis for recommending the loan?

The guarantee ensured that we had a legal obligation from an individual with the financial wherewithal to repay us if necessary.
Q So the financial strength and the guarantee are connected?
Correct.
Q If you could turn to page five of this document and go to the section entitled, "financial analysis." It's below your signature. t a high level, can you tell me what is reflected in this segment of the report?
So this section of the report is a summary of the client's financial profile. It is broken down on this table by the kind of assets, the kind of liabilities that they have, and it's got some key ratios from our risk management around cash flow, leverage, liquidity.
(Continued on the next page.)

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Q So where are those key ratios reflected on here just so I'm looking in the right place?
Towards the bottom of the table, the bottom four rows and the heading immediately above it.
Q So it's the -- on this section, "key ratios on secured lending guidelines?"
That's correct.
Q nd why are those key ratios for the bank?
Those are key ratios because they are ratios that we commonly use to measure and compare one client financial profiling against another and our documents and the lending guidelines would refer to those key ratios and then assessment of whether or not a client met or -- met somewhat all of those key ratios.
Q Go back to the top of this section. It states:
"Guarantor's function summary. lthough facility is being extended to an SPV for the purposes of financing the purchase of the resort, the credit exposure is being recommended primarily based on the financial profile of the guarantor."
Why is the financial profile of the guarantor the primary basis for recommending this loan?
The wealth management business at Deutsche Bank would not make loans secured just on collateral without a strong financial guarantee or personal guarantee from a financially strong person. Given that this was unusual collateral as a golf

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resort and spa, we would not really want to have to foreclose on that collateral and so we would most likely first look to the guarantor to remedy any default -- payment default on the loan.
THE COURT: Ten-minute warning.
MR. W LL CE: Thank you, Your Honor.
Q If we look at the next part of that paragraph it states: " s part of this underwriting we have met with several members of the family office to conduct due diligence on the client reported financial information as prepared by WeiserMazars, an independent public accounting firm."
I'll pause there just for a moment to say what is the family office that's being referred to here?
I don't know specifically. I think it's referring to people that work for Mr. Trump in handling his personal -- personal matters.
Q Do you know who -- it says that "we have met with the office and conducted underwriting." Who is the "we" that have been doing the due diligence?
So this memo was prepared by lending officers. I imagine in this case it would have been Tom Sullivan and Kirk Stafford and Emily Schroeder who are the lending officers on this transaction. I'm not sure whether all of them met with the family office or whether it was just some of those people.
Q nd are you familiar with what due diligence they did that's being described in this memo?

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Not in detail.
Q We'll look at the next sentence. It states:
"Based on results of this due diligence, we have made certain assumptions that have resulted in adjustments to reported values."
What is the nature of the adjustments that they are making to the reported values?
So the DB adjusted numbers on the right hand column of that table and they are marking down asset values, not liabilities but asset values in various different asset categories.
Q nd do you have an understanding what the basis was for marking down those asset values?
So the reason for marking down the asset values is that the bank wants to be comfortable that in a -- in a stressed scenario with a client the individual is under financial pressure, asset values have fallen, the bank wants to know that it can still have a strong guarantor as its potential source of employment. Specifically how they did it in each specific case, I think I'd have to read further into the credit memo to determine.
Q If we look at the last sentence in this first paragraph, it states:
"Details on such adjustments are included in the analysis that follows. dditional details are included in the

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guarantor's financial statements which is attached at exhibits" -- I think that's Roman Numeral II.
Do you recall in connection with this credit analysis if you in fact reviewed the guarantor's financial statements?
Yes, I did.
Q Mr. Haigh, you've been handed a document that has been designated Plaintiff's Exhibit 330. I will just note that at the bottom it has a Deutsche Bank production number, DB-NY G 011946. Do you recognize this document?
Yes.
Q nd what is it?
It's the personal financial statement for Donald Trump.
MR. W LL CE: Your Honor, I would ask that this be entered into evidence.
MR. ROBERT: Statute of limitations objection.
THE COURT: Overruled. Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 330 in evidence.)
Q Mr. Haigh, is this the document you would have reviewed in connection with the credit report we were just looking at?
Yes.
Q Do you recall what you were looking for when you reviewed this report?
In very general terms I was trying to understand which

assets and which liabilities the obligor had so I could get a feeling for the kind of financial profile that I thought the client had.

Q nd do you remember what your conclusion was upon review of the document?

So in general terms my conclusion was the client owned a lot of real estate, which was not surprising; a lot of golf courses, which I didn't know how to value; that his debt was low; that his liquidity was good.

Q You mentioned that you didn't know how to value golf courses. Did you undertake any steps because of that?

Not with regard to the golf courses that were on his balance sheet; obviously with regard to the collateral asset the bank did.

Q nd the collateral asset was the golf course?

Correct.

Q If I could direct you to page nine of this document. I just want to draw your attention to the first paragraph under "Basis of Presentation." It states:

"The accompanying Statement of Financial Condition consists of the assets and liabilities of Donald J. Trump. ssets are stated that their estimated current values and liabilities that their estimated current amounts using various valuation methods."

Do you have an understanding of what is meant by the

term "estimated current values?"

My understanding of that term would be that it is estimated in the sense of they don't necessarily have appraisals or market evidence for the value of all of those assets, but it's estimating what they're worth as of the date of the financial statement, June 30, 2011.

Q Just to look at the next paragraph below. It states:

"Such valuation methods include but are not limited to the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and in some instances, outside professionals."

I just want to direct your attention to the list where it states "use of appraisals, capitalization of anticipated earnings, recent sales and offers and estimates of current values as determined by Mr. Trump."

re you familiar with those valuation techniques for the assets that are listed on Mr. Trump's Statement of Financial Condition?

So getting appraisals by independent appraisals is a common valuation appraisal method. Capitalizing anticipated earnings is offered on a lot of the methods that goes into developing an appraisal. It has also comparisons with recent sales and potentially offers for assets.

The piece about the estimates of current values as

determined by Mr. Trump, to some extent I'm familiar with in the sense that whenever a statement is made that is not prepared by auditors it contains estimates of value, they're informed by the management typically and so that's not uncommon to see something of that sort in a cover letter.

THE COURT: ll right. Let's take a 15-minute break in ten minutes -- no, it's the opposite. We're taking a ten-minute break in 15 minutes. See you all at a quarter of.

(Whereupon, there is a recess in the proceedings.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.

THE COURT: Notice it always feels like it's only ten minutes, but it really was 15 minutes.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: Let's continue.

CONTINUED DIRECT EX MIN TION

BY MR. W LL CE:

Q Mr. Haigh, when we broke we were talking about your review of Donald J. Trump's Statement of Financial Condition. I just want to know when you reviewed that statement did you make any assumptions as to the accuracy of the representations it contained?

I assumed that the representations of value of the assets and liabilities were broadly accurate.

MR. W LL CE: If we could go back to Plaintiff's Exhibit 293. If we could go back to page six again.

Q If we zoom at the top, this is the continuation of the financial analysis. I just want to highlight for you this segment, which says: "Real estate net equity."

"The following table summarizes the guarantor's total real estate portfolio as of 6/31/11, which reflects the guarantor's four fully owned trophy properties, the portfolio of ten wholly-owned club facilities, other major property interests, and properties currently under development."

I'll just pause there. I assume 6/31 is a typographical error. June didn't have 31 days in 2011?

I think if my memory serves me correctly --

THE COURT: I'll take judicial notice that June has 30 days, not 31.

Q Do you have an understanding of -- well, first of all, what is meant by the term "trophy properties?"

That was a phrase that was used within private wealth management lending group and credit risk management to identify four significantly sized assets that we believed we could get a better understanding by ourselves of their potential market value.

Q So the term "trophy properties" is specific to this

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analysis of Mr. Trump?
Specific to Mr. Trump in this analysis only, that's correct.
Q nd do you know why these four properties were broken out?
They were broken out because they were large and represented significant asset positions and as I said earlier because we felt that we could get an idea of the market value of those assets unlike the club facilities and -- unlike the club facilities which we thought it would be hard to get it -- our own picking of their worth and unlike the other property interests which were I think probably much smaller and therefore would require a lot more internal resources to try and analyze.
Q If we step away from this sheet for a moment and go down to the segment that states "Trump Towers" -- and, again, I guess just note for the record there is just one Trump Tower up here. There is not multiple; is that correct.
This section states: "The 68-story building contains residential and condominiums that are owned by residents along with 178,000 square feet in commercial space and 114,000 square feet of retail space. The property has an NOI of 17.1 million and the guarantor used a cap rate of 3.50 percent to derive reported value."
First of all, what is -- what are the initials NOI?
They stand for net operating income.

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Q nd do you know where Deutsche Bank obtained this information of a net operating income and a cap rate of 3.5 percent?
So I can't personally be specific, but I assumed at the time -- I would assume now that it came from information provided by the client's family office.
Q If we go down to the property 40 Wall Street. That states that it is a 72-floor tower, consists of 1.3 million in premier office space. The property has an NOI of 26.2 million with the guarantor using a five percent cap rate to derive the reported value."
Do you know where Deutsche Bank obtained the information about 40 Wall's NOI and the cap rate used to derive the reported value?
gain, I would assume it came from Deutsche Bank speaking with the client's family office.
MR. KISE: Objection, Your Honor. That answer and the previous answer, that's an assumption. That's not an answer. That's -- there is no foundation for him to support that. He doesn't know. The answer to the question would be no, he doesn't know.
THE COURT: Well, let's ask him to explain what did you know, what did you not know?
THE WITNESS: I did not see the documents or the -- I was not at the meeting where this information was

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communicated to the bank and I did not personally see any documents that communicated that information.
THE COURT: This is a, in my view, a subtle area. To what extent does an answer have to be definite? I don't think it has to be a hundred percent. In other words, it can't just be mere speculation, so.
MR. W LL CE: I can try to build this out a little bit.
THE COURT: Sure.
Q Mr. Haigh, did you have a general understanding of how the bank obtained information that would be precluded in these reports?
Yes. The bank would normally get some sort of certificate of financial -- some sort of financial statement, personal financial statement and it would typically have questions about that and there would then be a discussion with the client to explain what was on those financial statements. In this case around a net operating income on a building, the bank would have no way of knowing what that information was by itself unless it came from the client.
Q I want to focus if we go back to Trump Tower for a moment. The next sentence states that "for purposes of adjusting DBVSG used a 4.5 percent cap rate."
First of all, what is DBVSG?
Deutsche Bank Valuation Services Group.

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Q nd so why is -- do you have an understanding of why Deutsche Bank Valuation Services Group is adjusting the cap rate?
So the wealth management business engaged Deutsche Bank's Valuation Services Group which is a group of appraisers. They engaged them not to renew specific appraisals because the bank hadn't commissioned any appraisals on these assets. Instead, the bank -- the wealth management business consulted with the group about market conditions. The valuation services group has access to various databases and market information based on which their thinking was that a 4.5 percent capitalization rate would be more appropriate than a 3.5 capitalization rate.
Q I just want to go back to something you mentioned in your answer. You said that they did not -- you said "the bank had not commissioned appraisals on these assets."
When you say "these assets," are you referring to the four trophy properties?
That's correct.
Q Why didn't the bank commission appraisals on those four assets?
The bank normally always as far as I can think of only commissions appraisals on assets that needs taking as collateral. These assets were not collateral.
Q If we go back to the chart on the four trophy

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properties. We see that there is a column marked "DB Valuation" and says "Trump Tower 380.2." Is that an indication of an actual valuation of the property by the DB Valuation Services Group?

No, not an actual appraisal of the property, no.

Q What is reflected in that column?

I think that number reflects -- it captures the number that was stated -- that we just discussed, which is the valuation services group's opinion of what that property might be worth without having done all the due diligence that they would do around a true appraisal.

Q I think we can take this section down and I'd just like to look -- oh, actually back up. pologies.

Just a little further down on page six there is a segment entitled above "facilities" and it describes a series of ten private clubs owned by Mr. Trump. It then states there is a discussion of membership requirements and membership liabilities.

I just want to focus your attention on the last sentence. It states: "For purposes of our analysis, the 1.3 billion in reported value had been reduced by 50 percent for deriving an adjusted value."

Do you have an understanding of why this technique was used to adjust the value of the club properties?

MR. KISE: Objection. What technique?

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THE COURT: Sustained. I don't see the technique there. I see the conclusion.

Q Do you know why for purposes of the analysis in the credit report, the $1.3 billion in reported value of the club facilities was reduced by 50 percent for deriving an adjusted value?

The value -- the reported value was adjusted in our financial analysis by 50 percent which was a -- I think standardized number for commercial real estate assets and the purpose of doing that was to just have a broad sense of what those assets might be worth. If we were in bad market conditions and we needed to seek repayment from the client and the client's assets had fallen in value, 50 percent represented a number which would be significant and yet we could still look at those assets and see whether there was any equity in those assets, meaning --

MR. W LL CE: We can take this down.

Q Can we take a look at page two, Exhibit 293? nd if we look at the segment entitled "collateral." Just zoom on that it's up a little. nd the section marked "guaranteed" -- can you zoom on that just a little?

This section states: " first mortgage and a first priority security interest in the resort, including the borrower's fee, simple estates, all personal property, leases, rents, revenue, operating accounts, reserves, and all other

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assets."

Did this -- the nature of this collateral, did that have any effect on the decision to approve this loan?

Yes. Collateral is a significant part of the bank's protection and so it was significant in approving this loan.

Q The next segment states "Guarantee."

"The guarantor will provide a full and unconditional guarantee of (i) principal and interest due under the facility and (ii), operating shortfalls of the resort. It being understood that the borrower shall be permitted to utilize all revenues from the resort to operate the resort to reduce the amount of such a shortfall."

Does the nature of the guarantee affect your analysis in approving the loan?

Yes. The guarantee provides -- it's also significant, very significant to the bank in terms of whether it would approve or not, so the guarantee in the financial profile of the client who gives that guarantee.

Q nd if we go down to a section a little bit further down it states "interest rate."

It states: "Renovation period: LIBOR plus 2.25 percent or the prime rate."

"Post renovation period: LIBOR plus two percent or the prime rate minus .25 percent."

Just ask you if you can explain your understanding of

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some of the words here. What is renovation period?

So there was a -- the first part of this loan, this piece of real estate was undergoing renovation or improvements and so its cash flow would have been lower at that time.

Q Can you just explain to me what is meant by LIBOR plus 2.25 percent?

So LIBOR stands for London Interbank Offering Rate and here it represents loosely the cost of the bank funding itself. So it was a cost the bank has to pay for having monies that it then lends out to all the clients. Loosely.

nd the 2.25 percent on top of that LIBOR index represents, loosely, income for the bank and together they represent the interest rate that the client pays for whatever interest period that the client chooses.

The transcript continues on the following page....

Q Look at the next line, the post renovation period. I think the explanation of that is implied by your description of what the renovation period was.

What was the post renovation period?

So post renovation period is that period after the renovations have been completed or largely completed. t which point, the bank anticipates that the income from the real estate would be higher than previously.

Q So why is there a difference between the renovation period rate and the post renovation period rate?

Bank's view was that there was a less risk in an asset that is post renovation and is more fully income producing.

MR. W LL CE: If we can just back out of this for a moment and just look at the whole page.

Q This section is headed "facility details." Is there an interaction between each of those terms and your decision on whether or not to approve this loan?

MR. KISE: Objection, interaction.

THE COURT: s to the wording interaction?

MR. KISE: I'm not sure I even understand the question.

MR. W LL CE: The question is whether the witness understands.

THE COURT: Right. I was going to say.

I am going to ask the witness do you understand the

question enough to answer it or no?

THE WITNESS: I believe so.

THE COURT: Okay. Overruled.

So the contractual terms of the loan in the broadest sense that are captured on this page, they are part of the risk profile of that loan facility, and so they are part of -- those are the items that I am approving with my approval, so it is important to understand what those terms are.

THE COURT: Did that answer the question?

MR. W LL CE: I was going to try and rephrase it a little.

MR. KISE: I'm not sure it did.

THE COURT: You deem that withdrawn, stricken and try again?

MR. W LL CE: Maybe I'll use it later. Can we keep it on the record? I'm happy -- we can withdraw it. I will rephrase the question. I would be happy for it to be withdrawn.

THE COURT: Then the answer is stricken.

Q Does the existence of the guarantee have any impact on the interest rate in these terms?

Yes, it does.

Q nd what is the nature of the impact of the guarantee on the interest rate terms?

So there is a given that there will be a guarantee in

the first place because wealth management did not do business without personal guarantees. In addition, the strength under which that guarantee will be reflected in the pricing of the loan, the spread to the bank in other words. lso, in the terms of the loan including its size.

Q When you said spread and pricing, that's the 2.5 percent over -- we were talking about 2.25?

The spread is at 2.25 percent number.

MR. W LL CE: If we could just turn to page 11 of this document.

Q If we take a look at the box at the top of the page, it is entitled "covenants." Were these covenants relevant to your decision to approve the loan?

Yes.

Q What is the significance of the covenants to your decision to approve the loan?

Loan covenants inside the loan documentation provide protection to the bank against deterioration in either the real estate itself or in the guarantor's financial position.

Q If we look at the top under the heading "guarantor," it states -- there's two for guarantor. First one states, "business financial statement, guarantor to provide a financial statement annually dated within 90 days of 12/31." The next segment for guarantor states "personal financial statement."

I just want to understand, is there a difference

between a business financial statement and a personal financial statement listed here?

I think in this case, the business financial statement was an illusion to the financial statements of the legal entity that would be on the loan and the personal financial statement is Donald Trump's entire personal financial statement.

Q Looking at the second bullet, then it states, "guarantor, personal financial statement. Guarantor to provide a financial statement annually dated within 90 days of 12/31."

Why did the guarantor have to provide an annual financial statement?

The bank wants to be sure that the client's financial strength is being maintained and also the bank wants to be able to test its covenants periodically.

Q So I'll just read into the record the next point below that. It says, "compliance certificate, guarantor to provide a compliance certificate annually dated within 90 days of 12/31 and lender will have right to confirm required liquidity through review of account statements at the offices of the guarantor."

Is that what you were referring to in being able to test?

Yes, that's how the bank would test its covenants. That's how it would get the information to test its covenants, but to be clear, the compliance statement is a statement by the client that they are in compliance with all of those financial

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covenants. The bank would use the financial information that they provided to test itself to try and ensure that the client is in compliance with those covenants.

Q Okay. So the -- there's a requirement that the guarantor make a certification, but then there is a requirement to provide information that the bank can use to confirm the accuracy of the certification? m I understanding that correctly?

That is correct.

Q If we look down at the financial covenants, it states -- and this is during renovation period -- "required only until post renovation period begins. Liquidity, guarantor shall maintain unencumbered liquidity at all times (defined as unrestricted cash or marketable securities convertible to cash within five business days that is not pledged to support any obligation of at least 50 million with at least 20 million to be maintained with the lender.) This cash will not be pledged as collateral."

Why did the guarantor have to maintain unencumbered liquidity of $50 million during the renovation period?

The liquidity covenant would be the loan documents was intended to ensure that the client always had sufficient cash on hand to meet the obligations under this loan in terms of ongoing interest or potential pay-downs or partial pay-downs of the loan principal.

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Q If you look two lists down, it states, "net worth guarantor shall maintain a minimum net worth of 2.5 billion excluding any value related to the guarantor's brand value (as such minimum net worth is reflected in guarantor's Statement of Financial Condition prepared by guarantor in substantially the form prepared by guarantor as of the date of this term sheet, a copy of which will be delivered to lender.)"

So why is the bank requiring the guarantor to maintain a minimum net worth of $2.5 billion?

In order to ensure that the financial guarantor remained strong with enough wherewithal to repay our loan should we need to be repaid.

Q That net worth is to be used to determine by guarantor Statement of Financial Condition; is that correct?

MR. ROBERT: Objection.

THE COURT: Sustained.

Q How is that $2.5 million net worth to be established?

The loan documents --

MR. KISE: Objection, foundation.

THE COURT: Excuse me?

MR. KISE: Objection, foundation. I don't know that this witness knows.

MR. W LL CE: t some point, he is reading the document. He said he prepared the document.

MR. KISE: He did not say he prepared the document.

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Let's be clear.

MR. W LL CE: He reviewed the document.

MR. KISE: He reviewed the document is the testimony I heard. I don't think he prepared it, but the establishment of the 2.5 billion net worth requirement is not something this witness has testified he had any involvement in. If there's a foundation, he can lay the foundation, but he hasn't testified that this witness had anything to do with setting that number.

THE COURT: Well, foundation is sort of tricky question in my view.

Mr. Wallace, can you lay a foundation or try to?

MR. W LL CE: I'm trying to get us out of here by December 22nd, your Honor, but I'll do my best.

Q Were you familiar with the terms of the loan that are being laid out in this credit report?

Yes.

Q Did you have to understand the terms that are being laid out in this credit report in order to undertake your responsibility to approve the loan?

Yes, I needed to understand those terms.

Q Did you have any input in the decision to set a minimum net worth of $2.5 billion?

Yes.

Q Why did you determine to set -- what was your role in

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helping to determine the $2.5 billion number?

s part of a credit risk management team, the ultimate signer, I need to be comfortable with the terms of the loan including the covenants to protect the bank. That $2.5 billion minimum net worth was one of those covenants and it was set in order to make sure that the bank would be fully protected under adverse market conditions.

Q re there any factors that go into the analysis that you were conducting when you're trying to determine an appropriate minimum net worth for a loan?

Determining the appropriate minimum net worth is driven by, I think, a combination of factors. One of which is the size of the credit exposure the bank is undertaking, and the other of which is the client's starting point, their initial net worth because the bank would want to set a covenant at a level that allowed for the client's assets to fall in value somewhat, but would still be triggered should that their assets fall substantially such that their financial risk profile would be changing.

Q Just to clarify, if we look under the next header, "post renovation period," it says, 'in lieu of renovation period covenants." The liquidity requirement is not -- does not appear in that section; is that correct?

I don't -- I don't see on this page.

MR. W LL CE: Scroll down, so we can see the whole

section. Down a little bit. No. Sorry. Thank you.
Q So does the liquidity requirement remain in the post renovation period?
I don't -- from this memo, I don't believe that it does.
Q But the net worth covenant of maintaining a minimum net worth of 2.5 billion, that would remain in the post renovation period?
Correct.
Q If we can just scroll down to the next box which states, "events of default and cure periods". It states just at the top, "usual and customary for facilities of this size, type and purpose, including but not limited to , payment default. B, breach of representation and warranties. C, violation of covenants."
What would a payment default consist of?
payment default would be a failure to make some payment due to the bank lender's loan documentation on time.
Q nd what would a breach of representation or warranties consist of?
It would be literally a breach of the representations of warranties that are made in the loan documents at the time they are signed.
Q nd what would a violation of covenants consist of?
It would be a failure with regard to those financial

covenants to maintain the ratios or numbers that are set out in those covenants.
Q So does it only relate to the financial covenants?
No, it would relate to any covenant. So a loan has many, many covenants not all financial and it would cover all the covenants of a loan.
Q What would happen on a loan in the event of a default?
If there is a default on a loan, a default on a loan covenant, the -- so if there is a default on the loan covenant, there's been a breach of the -- it is a contractual arrangement between the bank and the borrower. The bank has various remedies for that which it can pursue like waiving the breach, which it might do for an inconsequential breach; negotiating some variation of the terms of the loan, or potentially accelerating the loan and ask for repayment.
MR. W LL CE: I think we can put that document aside for now.
Q Mr. Haigh, you've been handed a document that has been marked as Plaintiff's Exhibit 291. Could you just take a moment to review this document.
(Witness reviewing document.)
Okay.
Q Do you recognize this document?
Yes.

Q nd what is it?
It's a credit memorandum for a new credit for the product in Chicago.
Q nd who is the borrower in this transaction?
The legal entity is 401 North Wabash Venture, LLC.
Q re you familiar with what entity is, that borrower is?
It is a limited liability company that owned the asset.
Q nd we will look at the top box again. It says, "beneficial owner, Donald J. Trump."
Does that mean he is the beneficial owner of the borrower?
Correct.
Q Can you just turn for a moment to page six of this document. Is that your signature?
Yes, it is.
Q nd what is indicated by your signature?
My approval of this loan proposal or transaction.
MR. W LL CE: Your Honor, we would ask that Plaintiff's Exhibit 291 be entered into evidence.
MR. ROBERT: Objection, statute of limitations.
THE COURT: Overruled. It is moved in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 291.)
Q If we go back to the first page, I believe you noted that this is a new request in the box tick at the top. Can you

remind us again what is indicated by the fact that it is a new request?
It is a new loan asset for the bank.
Q nd do you remember generally the terms of this loan or the -- let me -- may I withdraw that question, your Honor?
THE COURT: Withdrawn.
Q Can you describe for us generally what is the nature of the loan that's reflected in this credit report?
It's a credit facility secured on commercial real estate.
Q nd at a high level, would the review or analysis that you and your team conducted be the same for this credit facility as the one we were just looking at?
Yes, it would.
Q If we could turn to -- if you look at the bottom of this box, it states, 'the facilities will also be further supported by a full and unconditional guarantee provided by DJT of little I, principal and interest due under the facility. nd two, operating shortfalls of the collateral property as defined herein."
Does this guarantee operate in the same manner as the guarantee that we saw on the earlier loan document, on the earlier report that you were testifying about?
Yes.
MR. W LL CE: If we can go to page five of this

document.
Q If we go down to the section marked "recommendation," I will first ask who is making the recommendation that's contained in this box?
The lending officers that prepared the memo.
Q nd who is the recommendation to?
Credit risk management, my team.
Q If we look at the top of this segment, it states, "the facility is being recommended for approval based on quality of the collateral and LTV. The property is in the form of a luxury hotel and condominium building located in Chicago based on recent as is values provided in appraisals as discussed herein and performed for purposes of underlying needs of the facilities. The residential component is valued at 113 million which provides a maximum LTV of 55 percent and the commercial component is valued at 126.3 million which provides a maximum LTV of 36 percent. The combined maximum LTV based on the maximum commitment amount of 107 million is 44.7 percent."
First question, why is quality of the collateral and LTV the first item listed in this recommendation?
The collateral is significant in taking decision on whether to approve the loan.
Q You see again that there were as is values provided in appraisals. Why were appraisals performed on that property?
The property was real estate and so by policy and by

regulation, the bank was required to obtain appraisals on real estate.
Q If we look at the next bullet point, it states, "financial strength of the guarantor, the financial profile of the guarantor includes on an adjusted basis 146 million in unencumbered liquidity, 2.4 billion in net worth, and approximately 13 million in adjusted excess recurring net cash flow."
Why was the financial strength of the guarantor one of the grounds for recommending this loan?
Because having a guarantee was a requirement for private wealth manager to do business and having a strong financial guarantor was a requirement for this transaction.
Q I guess does that have any implication for the third bullet point we are seeing here, the nature of the guarantee? Let me rephrase that question.
What was the relevance and nature of the guarantee to the recommendation to approve this loan?
It reflects -- the nature of the guarantee reflects the fact that we had a full guarantee with no limitations on that guarantee.
Q If we could turn to page seven of this document. There is a segment again that's headed "financial analysis, guarantor. You see at the top, it states, "guarantors-financial statements. lthough facilities are secured by the collateral, given its

unique nature, the credit exposure is being recommended based on the financial profile of the guarantor."
Do you have an understanding what is meant by the unique nature of the collateral?
So unique is probably a bit of a hyperbole because it is unusual for the private wealth management business to have hotels as collateral and it is unique for private wealth management business to have a condo inventory as collateral, unsold condo units.
Q If we look at the table, we see that there's financial summary segment. One row -- sorry. One column states, "DJT 6/30/2011 client reported. Next column states "DJT, 6/30/2011 DB adjusted." Next column states, "DJT 6/30/12 client reported." nd the final column states, DJT 6/30/2012 DB adjusted."
First question, why are the years 2011 and 2012 both broken out in this chart?
We had financial information of two years at least and the aim was to show or to identify whether there's any trend in changes between -- from one year to the other.
Q We see that both the 2011 and 2012 years, there are DJT adjusted numbers. Did the adjustment process that's reflected in this table operate in the same way as the adjustment process we saw on the prior exhibit?
Yes, it did.

MR. W LL CE: If we could just scroll down to -- actually, page -- can you show side by side page eight of this exhibit and page six of PX 293. Just zoom in on the table, please.
Q So if we look at the two tables, it would appear that for 2011 and for 2012, the valuations and the analysis for three of the Niketown, 40 Wall, and Trump Park venue remain the same. Do you see that?
Yes.
Q But for Trump Towers, there's a change. Do you see that?
Yes, I do see that.
Q nd if we can just pull up exhibit -- we can drop it now for 291, please, and just go down to the section on Trump Tower. That's on page eight. So there's another line segment that states -- underlying section that states, "the loan is non-recourse." I'm going to focus on the sentence that's after that.
"The loan is non-recourse and matures in 2022." It says, "a recent appraisal performed in conjunction with the refinance valued the property at 480 million resulting in a roughly 21 percent of LTV. lthough, we did not adjust for the additional liquidity distributed to the guarantor, we are adjusting the property value to reflect the recent appraisal and new debt."

Can I ask so why did Deutsche Bank incorporate this new appraisal into its analysis?

So it appears that Trump Tower had been refinanced recently not by Deutsche Bank and that in connection with that refinancing, the financing entity had commissioned an appraisal which had been made available to Deutsche Bank. So the bank felt that it had an independent view on the value of that asset.

Q nd the bank was comfortable in incorporating that independent value into its analysis of the property?

Correct.

Q Mr. Haigh, you've been handed a document that's been marked Plaintiff's Exhibit 470. Can you take a moment to familiarize yourself with this document.

Okay.

Q Do you recognize this document?

Yes.

Q nd what is it?

It's a memo prepared by my colleague Sean Harrigan, amended by me, addressed to my boss, Thomas Eggenschweiler.

(Continued on the next page.)

Q nd just to clarify for the record, the memos and attachment to an e-mail from Shaun Harrigan to you dated May 23, 2012; is that correct?

Correct.

MR. W LL CE: Your Honor, I would ask that this document be entered into evidence.

MR. ROBERT: Objection. Statute of limitations.

THE COURT: Overruled. It's in evidence.

Q Mr. Haigh, does this memo relate to the same transaction that was being addressed in the credit report that you were reviewing?

Yes.

Q nd that's the -- a loan involving the Trump International Tower Chicago?

Yes.

MR. W LL CE: If you could flip to page 3 of the document? If we could focus on what's in Item 2 under "PWM Facility of Summary Terms." It would be item two. I'm sorry, three. Item three, which is headed "PWM Facility Summary of Terms."

Q nd the first sentence -- let me withdraw that. What is PWM?

Private wealth management.

Q nd that's the part of the bank you worked for?

That's the business unit that I supported and approved

their -- decided their credits.

Q The first sentence in this segment states: "CIB terms for the condos" and continues -- before we go there, I would just ask what is CIB?

Stands for commercial and investment bank. They had a commercial real estate lending group that would make loans on commercial real estate.

THE COURT: Ten-minute warning.

Q nd that is separate and apart from your private wealth management group?

That is a different business line and a different profit and loss line.

Q Memo states: "CIB terms for the condos for the lesser of 75 MIO or 55 percent LTV; two year (one year extension option required amortization and reserve account on a nonrecourse basis at L plus 800 BP CIB as indicated to PWM if they are comfortable with this LTV given (i) their long history with the property and (ii) the momentum in condo sales that has been demonstrated for the last two years."

Just ask you to define some of the terms that are contained in there. What is L plus 800 BP?

Stands for LIBOR plus 800 basis points and there are 100 basis points and one percent, so that means LIBOR plus eight percent.

Q nd why are you discussing the CIB terms?

Two business divisions at Deutsche Bank were making proposals on the same potential loan and as -- we wanted to be sure that they made sense with regard to each other so the bank didn't look foolish in front of the client with two completely different sets of term sheets that bore no relation to each other.

Q nd why is nonrecourse basis involved here?

The commercial and investment bank business covered real estate. It would not normally take full recourse to an individual. Their principal source of repayment would be the real estate itself and only the real estate, although there may be some small guarantees around certain behaviors and the pricing reflects that risk profile that they were taking on.

Q nd if we look at the next paragraph, it states: "PWM is proposing terms on a full recourse facility to provide up to the same level of proceeds as CIB with the same two-year term for pricing in the range of L plus four percent. The spread differential is based on a full guarantee of Donald Trump. See credits below."

So you said that the bank didn't want to look foolish in front of the client and was comparing terms?

Correct.

Q nd so this is the comparison that you're making between the two divisions of the bank?

That's correct. The difference between a nonrecourse facility and a full recourse facility and their different pricing.

Q nd by pricing that would be the difference between LIBOR plus 800 and LIBOR plus four percent?

That's correct, the spread over LIBOR.

Q nd so the difference between LIBOR plus eight percent and LIBOR plus five percent is based on full guarantee of Donald J. Trump?

Yes.

Q I'm going to correct the record. I apparently read it incorrectly.

So the difference between LIBOR plus 800 basis points and LIBOR plus four percent is based on the full guarantee of Donald J. Trump. Is that what's reflected in this memo?

That math is correct and that is the understanding of why there is a difference in price.

THE COURT: Several of us caught you on that one.

MR. W LL CE: I'm glad I have all of you here to be --

Your Honor, I'm going to move on to a new year and a new loan. I don't know if you want to take our break now.

THE COURT: Up to you. You have five minutes.

MR. W LL CE: Sure. Why don't we at least introduce the document.

THE COURT: You know what, on second thought, let's all have a nice long lunch. See you at 2:15.

THE COURT OFFICER: Everyone remain seated.

(Whereupon, there is a luncheon recess in the proceedings.)

F T E R N O O N S E S S I O N

THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Please be seated and come to order.

THE COURT: Let's get the witness back.

THE COURT OFFICER: Witness entering.

(The witness enters the courtroom and approaches the witness stand.)

THE COURT: I'll remind the witness that he's still under oath as I remind all witnesses during lunch breaks. nd let's proceed or continue.

CONTINUED DIRECT EX MIN TION

BY MR. W LL CE:

Q Good afternoon, Mr. Haigh. I just wanted to cover something I missed concerning Exhibit 293, it's the 2011 credit report. If we could go to page six and look at the bottom.

t the bottom here there is a segment that reads: "Properties under Development."

It states: "Consists primarily of the property known as The Mansion at Seven Springs in Bedford, New York, which

consists of over 200 acres of land, a mansion and other buildings. This property is zoned for nine luxury homes, also includes property in Beverly Hills, California. For purposes of deriving at adjust value, assumed a 75 percent haircut to reflect the uncertainty in valuing undeveloped land."

First of all, what is a haircut?

In this context a haircut is a way by which the bank reduces the stated value of the asset in order to form some kind of assessment as to what the asset might be worth in an adverse market situation.

Q nd is that different from the adjustments that you were looking at before?

The adjustments for the four specific properties were based on our own valuation services group input on those four assets. The adjustments on the golf courses were based on the standardized approach and this is more of a standardized approach.

Q Okay. nd so why in that standardized approach is the haircut 75 percent?

I think because the assets -- properties under development or not yet developed potentially have a large range of outcomes of their value, so.

Q Let me put that one aside.

Mr. Haigh, you've been handed a document that's been marked Plaintiff's Exhibit 294. If you can take a moment to

just familiarize yourself with the document.

Okay.

Q Do you recognize this document?

Yes.

Q What is this?

It's a credit report covering a new transaction and the renewal of the existing transactions and an increase on the third transaction all captured in one credit report for this group, this relationship.

MR. W LL CE: I'm sorry to interrupt you. If we can just turn quickly to the page 11 of this document.

Q I can show you on the screen, Mr. Haigh.

Is that your signature on the far right of the screen?

Yes, it is.

Q nd what is indicated by your signature on this document?

My approval of the terms in the document.

MR. W LL CE: Your Honor, we would ask that this exhibit be moved into evidence.

MR. ROBERT: Objection. Statute of limitations.

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

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 293 in evidence.)

Q While we're here we have the signature of

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Mr. Eggenschweiler. Have I pronounced it correctly?
Why is he signing this report?
The combined exposure to the group was above my authority level given the rating of the facilities.
MR. W LL CE: Okay. If we can go back to the first page?
Q There is a box towards the top entitled, "Reason for Presentation." Is this what you were referring to when you were describing the purpose of this credit report?
Yes.
Q So the first Item states: " nnual review of Trump Endeavor 12 LLC loan facility." Says "request to change annual review date to 4/30/15."
What is encompassed in an annual review of the Trump Endeavor 12 LLC facility?
We do an annual review of every loan facility that we have to see whether anything has changed. We refresh the financial information, we look at the operating performance of the collateral and there is a request here to change the date I think for administrative reasons to make it more convenient along with the other facilities that existed for this group.
Q nd so I think you referred to the -- what's being reviewed as part of the annual review?
We're reviewing the credit exposure that we have, so has it performed in accordance with the terms of its

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documentation.
Q nd what information are you using to make that review?
We're using updated financial information on the guarantor, we're using updated financial information provided by the borrower, the owner of the collateral as to performance of their business.
Q The next Item B states: "Increase in annual review of 401 North Wabash Ventura LLC loan facility request to increase Tranche B facility by 54 million to a maximum of 73 million with a new maturity date of ten years from closing of the extension" and also a request to change the annual review date.
What are you looking at when you're looking at an increase and an annual review for the 401 North Wabash Venture loan facility?
So this is an increased loan exposure which requires us to re-underwrite all of the factors that went into the original credit, both the lateral and the guarantor, locate all of those factors to see that it supports a new role that's gone up to $73 million.
Q nd does the analysis you would conduct for an extension the same as the analysis we discussed for the prior two credit reports that we looked at?
Yes.
Q If we look at Item C it states: " pproval of a new $170 million first mortgage facility to the borrower Trump Old

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Post Office LLC to be used for the development of the Old Post Office property in Washington, D.C."
Is this approval process the same as the approval process we saw on the earlier two statements of the Financial Condition?
Yes, with the added caveat that we needed a higher level of approval authority within credit risk management to approve the transaction.
Q If we could look down below a little bit of the page. There is a box entitled -- it's this box on the left that says "currency" at the top. There is a series of boxes "new limit usage previous limit." The column on the left says "Loan Tranche , new limit, 106 million."
Below that, "Loan , Tranche B, 19 million."
"Loan B, 73 million."
"Loan C, 170 million."
"Loan C, swap threshold amount, 10.25."
"Related exposure, blank."
nd then it says "total exposure, 378.25."
What is indicated in this portion of the chart?
Those are the credit exposures that Deutsche Bank was taking on each of those facilities.
Q nd Loan C, does that conform to Item C that we were looking at, the new loan for the Trump Old Post Office building?
I believe so, yes.

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Q So the total exposure is listed at 378. I'm going to assume that's million?
Correct.
Q Is that the credit limit that required Mr. Eggenschweiler to also sign off on the credit report?
Yes, Eggenschweiler.
Q nd why does he need to sign off at that document level?
Because my credit authority was governed by the size of the overall relationship and also by the rating of the weakest facility in that overall relationship which in this case was a triple B rating which is in the section just above where you're looking at on the screen.
Q So if we could scroll down a little bit.
Yes, there you go. Says "FPD, dBBB" at the top.
Q I'm just going to point to it. Is this the segment you were talking about?
That is the correct segment, yes.
Q So I'll just -- this is the segment under the heading "risk rating current." It states: "Loan , Tranche , CPD, I , FPD." nd then it says "dBBB." That's the rating we're talking about?
That's correct.
Q Do you recall the purpose of this new facility?
Yes.

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Q nd what was that purpose?
It was to provide financing for a substantial renovation of this Old Post Office building, which was going to be converted into a hotel.
Q If we could turn to page nine of this document and pull up the box that says "guaranty."
I'll just state this for the record. It states:
"Guarantee. Donald J. Trump, will provide a full and unconditional guarantee of (i), principal and interest due under the facility; (ii), swap brokerage costs; three, operating shortfalls of the property until the end of the shortfall coverage period; and four, a completion guarantee, guaranteeing the lien-free completion of the project acceptable to the lender as evidenced, by among other things, one or more temporary or final certificates of occupancy or their equivalent, architect, certificate and appropriate lien waivers, each responsibly acceptable to the lender."
So similar to the loans we looked at before this loan is also supported by a guarantee by Mr. Trump; is that correct?
That is correct.
Q nd did this guarantee operate similar to the guarantees we were looking at earlier for Doral and for the Chicago property?
Yes, it does.
Q If we look at the box that was just below that it

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states: "Guarantor covenants. During the redevelopment period the guarantor shall maintain unencumbered liquidity at all times of at least $50 million with at least 20 million to be maintained with the lender."
Why did the guarantor have to maintain unencumbered liquidity of $50 million?
The bank wanted to know -- to be covenanted to have that protection that the client would always have a substantial amount of cash on hand, that he could use to either meet the obligations under the bank's loan or potentially pay down the loan.
Q nd how would that liquidity be demonstrated?
Well, the 20 million that was to be held with the bank would be clearly visible to the bank at all times because we would have access to seeing that in the bank systems. The balance will be demonstrated through proving brokerage accounts or bank account statements that showed where that cash or those securities were held.
Q nything else that can be used to demonstrate the liquidity?
No, from recollection it was cash and securities that are convertible to cash within five days.
Q If we look down below it states:
" t all times during the term of the facility, guarantor shall maintain a minimum net worth of 2.5 billion

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excluding the value related to guarantor's brand value."
Why was the guarantor required to maintain a minimum net worth of 2.5 billion?
The bank wanted to be sure that in an adverse market scenario the client would always have enough financial resources to be able to pay off our loan.
Q nd how would the $2.5 billion net worth be demonstrated?
Through providing us with a personal financial statement and a certification in the loan documentation along the lines of the previous one we discussed.
Q nd just to confirm, the guarantor here is Donald J. Trump?
Yes.
MR. W LL CE: If we could turn to page 14.
Q If you look at the top again. It states -- there is a header at the top.
"It should be noted that the guarantor, DJT, is required to provide financials within 120 days of 6/30 FYE. Thus, the most recent financials available are as of 6/30/13. We are not aware of any material changes to guarantor's financial profile."
nd just to confirm, DJT, who is that referring to?
Donald Trump.
Q nd what is indicated by 6/30 FYE?

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So the financial yearend, FYE, is June 30th.
Q nd go back to the first page. I'll represent to you the date of this credit report is May 2, 2014. Would that explain why this note was included?
This memo is 11 months after the last financial yearend for which we already had financial statements.
Q Do you know what steps, if any, the bank would take to come to the conclusion that it was not aware of any material changes to guarantor's financial profile?
The bank would rely on representations from the client that there were no material changes.
Q If we look down at the next section it states: "Guarantor's financial summary."
" lthough all three facilities are secured by collateral given the unique nature of these credits, the credit exposure is being recommended based upon the financial profile of the guarantor."
I asked a similar question before, but what was the unique nature of the credit apart from anything we've discussed?
So all of these credits had collateral -- real estate collateral. It was not a normal type of real estate collateral for Deutsche Bank.
Q So the OPO property that is the collateral for this loan is also not collateral that the private wealth group --
Correct, correct. Private wealth management did not

normally do loans that involved substantial reconstruction on its collateral.

Q This section continues: " s part of this underwriting we have met with several members of the family's office to update our due diligence on client reported financial information as prepared by WeiserMazars, an independent public accounting firm with the due diligence process described here having been conducted in the same manner as the due diligence for the earlier reports that we reviewed."

Yes.

Q States: "Next based on the results of this due diligence we have made certain assumptions that have resulted in adjustments to reported values. Details on such adjustments are included in the analysis that follows."

What you see there is a table similar to what we've seen in the similar reports. Did the adjustment process operate in the same way for this credit report as it did on the earlier credit reports that we were looking at?

Yes.

Q The last sentence states: " dditional details are included in the guarantor's financial statements, which are attached as Exhibit 5."

Do you recall if you reviewed the financial statements in connection with this extension of credit?

I can't recall whether I reviewed them on this specific

extension of credit. I will be surprised if I hadn't, but I can't physically remember or accurately remember picking the pieces of paper and looking at them.

Q Okay. gain, we see that the financial summary table refers to DJT, 6/30/2011; DJT, 6/30/2012. Both say "client reported."

Next column states: "DJT, 6/30/120 to be adjusted."

Next column: "6/30/2013, client reported."

Final column: "DJT, 6/30/2013 DB adjusted."

Why is the bank looking as numbers for each of these years, 2011 through 2013?

It's trying to identify any trends in the change of values reported.

Q nd what was looking for trends and change of value have -- how would that have been used by the bank in its review of this credit?

It's a fairly standard banking process to look at history of financial performance over the previous few years and it's used to identify what's changing and then try and figure out why.

Q nd so that would influence your assessment of whether or not to approve this credit -- this credit extension?

Yes.

Q If we can just flip back to page two of this document and focus on this table at the bottom the header for this is

"covenants" and then lists a series of questions that are answered for facility , facility B, and facility C.

Do you recall what facility was?

Yes, I recall that was the original Doral facility.

Q nd is facility B the Chicago loan?

I think so from memory, yes.

Q nd facility C?

Is the new Old Post Office facility.

Q What is the purpose of this table?

It's to document the fact that the client was in compliance with their covenant obligations.

Q nd if we take a look at focus facility B in the middle, it says "are all covenants in compliance." Underneath that it states -- reporting there is a box checked "yes" and another box -- sorry -- another row, "financial" marked "yes."

What is demonstrated in that portion of the chart?

It's -- that's stating that the client's financial reporting covenants have been complied with and the client is also in compliance with the actual financial covenants that are -- we're asking him to report on.

Q nd if there was not a covenant had not been complied with, would that have been subject to the process we've discussed earlier for an event of default?

So any covenant that had not been complied with would go through some process for us to determine whether we needed

compliance for that covenant or whether we wanted to waive it or amend the documentation or potentially default the transaction.

Q So by signing off on this credit report does this reflect the determination by you that each of the loan covenants had been met?

So this report is prepared by the lending group. I personally had not checked that those loan covenants had all been met. I was relying on their statement here that we were in compliance and I was then -- my approval was conditioned on that fact being correct and accurate.

Q Understood.

Mr. Haigh, you've been hand a document that's been marked Plaintiff's Exhibit 298. Just take a moment to look through this document.

Okay.

Q Do you recognize this document?

Yes.

Q What is it?

It's an annual review credit memoranda.

Transcript continues on the following page....

Q If we look at the top, it says the date is July 20, 2015; is that right?
Correct.
MR. W LL CE: Your Honor, I would ask that this document be entered into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 298.)
Q If I could direct you to page seven of this document. We will pull it up on the screen.
Before the language lessons, we were looking at this section of the 2015 credit report. Do you recognize the signature on the right-hand side of the screen?
Yes, that's my signature.
Q nd what is indicated by your signature?
pproval of this annual credit review.
Q If you can take a look up I think at the top page one. t the top, it says, "purpose of presentation , annual review of Trump Endeavor 12, L.L.C. loan review; annual review of 401 North Wabash Venture, L.L.C. and C, annual review of Trump Old Post Office.
Do I understand this credit report is covering annual review for all three loans?
Yes.

Q Would the annual review process for this year 2015 and for these three properties operate the same as the annual review process we discussed previously?
Yes.
Q If you can go down to page two. gain, there is a segment marked covenants and checkbox is showing whether or not they are in compliance. What role did this information play in annual review of the three loan facilities?
It documented the client's status with regard to those covenants.
Q nd do you know what the source of information would be for the information contained in this chart?
It would be the latest information provided by the client. It would be reviewed for compliance with the covenants.
MR. W LL CE: Your Honor, I apparently have neglected to ask that Exhibit 298 be moved into evidence.
THE COURT: Granted. They are in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 298.)
Q If you can go down to page ten just briefly for a moment.
MR. ROBERT: I will keep my standing objection on that.
THE COURT: I was waiting for that.
MR. ROBERT: I knew you were.

Q If we look down at the bottom of page ten under the heading "liquidity," this section states, "the guarantor reports liquidity of 302 million as of 6/30/2014 consisting of funds in Mr. Trump's name personally and various entities that Mr. Trump controls. The client reported balances have remained on par from the prior year with minor fluctuations attributed to additional CRE acquisitions and the guarantor taking fewer distributions from his properties."
From this information, do you have an understanding of what the source was for the information on Mr. Trump's liquidity?
Yes.
Q nd what was the source of this year for his liquidity information?
Source would be combination of what was on his personal financial certificate or statement which would have been validated or verified to some extent by looking at the actual brokerage accounts or bank accounts showing that actual liquidity in existence.
Q Do you know if that verification actually happened in this year?
So I did not do that myself. It was done by lending officers, so -- but if they say that they -- I rely on my lending officers to do their job and to tell me the truth.
Q But this doesn't -- this language doesn't refer to any

additional due diligence performed by the lending officers who prepared the report?
MR. ROBERT: Objection.
THE COURT: Well, it is leading. Rephrase it. If it doesn't, not doesn't it.
Q Does -- is there any reference to lending officers actually checking the level of funds in this report?
I don't see a specific reference to that. It was part of the private wealth management businesses standard operating process to validate liquidity.
MR. W LL CE: If we could move on to page ten, please.
Q gain, this section says guarantor's financial summary. lthough all three facilities are secured by collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the guarantor.
What does that mean in the context of annual review that the credit exposure is being recommended based on the financial profile of the guarantor?
It means that the guarantor continues to have a substantial financial strengths and that our loans are good quality loans based on that personal guaranty that we have from him.
Q nd so does that necessitate any action by the bank or --

No.
Q gain, if we look at the top row, it says, "financial summary." You see reporting for 2011, 2012, 2013, 2014, both client reported and adjusted.
Why is Deutsche Bank looking at Mr. Trump's financial condition from 2011 through 2014 in this report?
Looking to see if there is any trend that is identifiable.
Q nd this information about any trend that might be identifiable is something that the bank is using in its analysis of -- in the annual review process?
Potentially if the bank identified a trend, if it was either worrying or improving, that would be a call-out in the write up.
Q Mr. Haigh, you've been handed a document that has been marked Plaintiff's Exhibit 300. If you can just take a moment to familiarize yourself with this document.
(Witness reviewing document.)
Yes, I see it.
Q Do you recognize this document?
Yes.
Q What is this document?
It is another annual review this time for 2016.
MR. W LL CE: Your Honor, I would ask that Exhibit 300 be moved into evidence.

THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 300.)
Q We'll walk through some of this in just a moment. If we could flip to page 9 of 27. t the bottom, your signature is missing from this document.
Do you have a recollection of why you didn't sign this document?
No specific recollection. It is possible I was on vacation at the time.
Q Okay. If you turn to page 13 and we look, there is an e-mail from Gaston llegre to -- is it Joern Joseph?
Yes, Joern Joseph.
Q Who is Mr. llegre?
Gaston llegre was a credit officer that worked for me on my team.
Q Who is Mr. Joseph?
He was the chief credit officer of the U.S. entities of Deutsche Bank.
Q nd you're copied on this e-mail, but underneath it says, Mr. llegre writes: "Dear Joern, following up on our conversation Tuesday, please find attached the annual review for Mr. Trump, the credit report has been approved by Thomas Eggenschweiler by e-mail (see attached) and me. In Nick's absence, would you please review and provide local -1 authority

approval".
Does this refresh your recollection as to why you didn't sign this particular credit report?
Well, it appears that I was absent, so I guess -- again, I'm guessing vacation.
Q nd obtaining approval from Mr. Joseph was another means of approving the credit report?
Yes.
Q Just to confirm, this document was approved by Deutsche Bank in the credit report? Is that fair to say?
I believe so. I believe there was an e-mail confirmation from Joern Joseph and Thomas Eggenschweiler that they supported the -- this document.
Q If we go to page two of this document, you see at the bottom of this page, again, there is another table reporting the nature of the loan covenants and compliance.
What was the basis for the information reflected in this chart?
The information would have started with the client, would have come from the client and then would have been analyzed by the support group within private wealth management.
Q If you could go down to page 15. If we look again, it is a summary chart. I ask was the adjustment process, the haircut process in this year the same as the process we've described in the prior years?

Yes.
Q If we look here, we see that this covers the year 2011 through 2015. gain, why is Deutsche Bank looking at the performance across all of those years?
We're looking to see for trends in the change in value of assets or liabilities.
Q nd was the change in trends relevant to the -- to your review of this credit report?
Yes.
Q We can go back to page three. There is a heading "guarantee type." This section states, "Guarantee level analysis is based on a 32.7 LTV. The guarantor has requested to retain a 10 percent guarantee level although terms of the previously approved tranche note allow for no personal guarantee if the LTV is below 35 percent. s outlined below, the guarantee level at or below 35 percent LTV was originally contemplated to be zero percent at which time pricing was scheduled to increase to L plus 2.00 percent retaining a 10 percent guarantee level clearly strengthens the credit."
Can you explain to us what is happening with the guarantee? What's happened with the guarantor's request to remain at ten percent guarantee level?
This particular facility had a step-down feature under which as the loan to value of our loan gotten lower and lower, so in turn, the amount of our principal plus interest that was

guaranteed stepped down. nd the 35 percent loan to value, we were willing to allow there to be no personal guarantee whatsoever. But in fact, as a consequence of that, the pricing would have increased, the spread, the L plus 2.00 number. Instead, the client -- his people said to us we would prefer to keep it 10 percent and take advantage of the lower pricing that goes along with the 10 percent guarantee.

Q Thank you.

You've been handed a document that has been marked Plaintiff's Exhibit 3137. Can you take a moment to familiarize yourself with this?

(Witness reviewing document.)

Okay.

Q Do you recognize this document?

Yes.

Q What is this document?

It is an annual review of all three credit facilities the bank had with Donald Trump.

Q nd is that indicated by the box marked "reasons for presentation?"

That together with the checked box at the top left which says "review."

MR. W LL CE: Your Honor, I would ask that Plaintiff's Exhibit 3137 be entered into evidence.

THE COURT: Granted. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3137.)

Q If we could flip to page ten, at the bottom, do you recognize the signature on the right-hand side of the screen?

Yes, that's my signature.

Q What is indicated by your signature?

That I approved the annual review.

Q Can you explain what's meant as the notation I will read as "for DBTC as regional head WM risk"?

So I was signing -- I was being clear that I was signing on behalf of Deutsche Bank Trust Company mericas as the regional head of the wealth management risk group effectively meant that my signature was sufficient for that -- for the approval of this annual review.

Q If we could turn to page eight of this document, focus on the section that states "recommendation." It says, "recommendation approval of the annual review for facility Doral facility; B, Chicago facility; C, OPO. Underneath that, it states, "all facilities financial strength of the guarantor, the financial profile of the guarantor includes a stated net worth of 5.7 billion which remains well above his $2.5 billion minimum requirement even on an adjusted basis. Guarantor maintains a strong liquidity position, $114 million in unencumbered liquidity. decrease of $60 million from the prior year due to political campaign costs."

Did you have an understanding of how Deutsche Bank would have obtained the information reflected in this section?

We would have obtained that information from the client and we would have validated any liquidity to some extent by looking at brokerage statements and/or bank account statements.

Q Do you have any specific recollection of considering dealing with the issue of decrease in liquidity due to political campaign costs?

That information would have come from the client.

Q But you don't remember any discussion of it internally?

I do not.

MR. W LL CE: If we could scroll down. Keep going.

Q I'm just going to have -- I'll start over. We see the chart here. It says, "financial analysis guarantor." Underneath guarantor is final summary. lthough all three facilities are secured by collateral, given the unique nature of these credits, the credit exposure continues to be recommended for support based on the financial profile of the guarantor or the ability to rely once again on the guarantor if collateral value has dropped and LTVs increased."

Why is that the primary basis for continuing to support credit?

The primary basis -- it's the primary basis because the collateral in all three cases was not the usual type of commercial real estate collateral that the bank would take.

Q nd once again, we see that there is information contained here about Donald J. Trump financial condition. I should say his financial summary from 2011 through 2016.

Why, again, is the bank looking at his financial profile from 2011 to 2016?

gain, it is to enable trends to be identified.

Q nd being able to identify trends was relevant to your analysis of the credit report?

Yes.

Q nd was that relevant to your ultimate approval of this credit report for this year?

Yes.

Q Mr. Haigh, you've been handed a document that's been marked Plaintiff's Exhibit 302. Take a moment to look through the document.

(Witness reviewing document.)

Okay.

Q Do you recognize this document?

Yes.

Q What is this document?

It's an annual review this time for July 2018 for three credit exposures we had with Donald Trump.

Q If we could turn to page ten of this. Do you recognize the signature on the far right-hand side of the screen?

That's my signature.

Q What is indicated by your signature on this document?
pproval of the annual review.
MR. W LL CE: Your Honor, I would ask that Plaintiff's Exhibit 302 be entered into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as People's Exhibit 302.)
Q Mr. Haigh, was the process for this annual review the same as the prior annual reviews we have been discussing this afternoon?
Yes.
Q If we could turn to page eight.
MR. KISE: For the record, I think the signature is on page nine. I saw it came up at ten.
THE COURT: nybody object to his signature being on page nine? I hereby deem it to be page nine. Ten-minute warning.
Q Mr. Haigh, we see another chart showing the analysis of financial analysis. Was the process conducted in this financial analysis the same as we discussed for prior years?
Yes.
Q gain, we see that the analysis contains the financial summary for Mr. Trump stretching from 2011 to what I believe is 2017. It looks like it is kind of cut off at this point, maybe 2018.

Why is Deutsche Bank looking at Mr. Trump's financial condition across all of these years?
In order to identify any trends in his financial situation.
Q Was that relevant to your analysis of this credit report?
Yes.
Q nd was it relevant to your signing off on this credit report?
Yes.
MR. W LL CE: I'll try to finish at the same time that we are breaking. So we're close.
Q Mr. Haigh, I handed you a document that's been marked as Plaintiff's Exhibit 466. If you could take a moment to look through this document.
(Witness reviewing document.)
Okay.
Q Do you recognize this document?
Yes.
Q What is it?
It's a set of e-mails, an e-mail chain between myself and Marzio Hug who was the senior credit officer in London.
Q Who is the senior credit officer?
He was the senior credit officer in London. He was Thomas Eggenschweiler's boss at the time.

MR. W LL CE: I will note for the record that this e-mail chain is dated at the top, e-mail chain is dated July 30, 2014. We ask that Plaintiff's Exhibit 466 be admitted into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Objection overruled. Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 466.)
Q Mr. Haigh, you remember the transactions being discussed in this e-mail chain?
I have some memories of it, yes.
Q In your e-mail at the bottom of the first page, it states, "We" issued a letter to Morgan Stanley today. It includes language that is not a commitment. We got an acknowledgment from Donald Trump that the letter does not waive or modify the terms of our existing transactions, that it does not obligate us to waive or modify our terms. It does not prejudice and of our rights and it is not a commitment."
Firstly, I would ask if you could turn to page three of this document.
THE COURT: I assume "and" is meant to be "any."
THE WITNESS: Correct.
Q nd is this letter the acknowledgment from Mr. Trump that you were referring to in your e-mail?

Yes.
Q It states at the top, "Dear Donald. You have asked Deutsche Bank to provide a letter in connection with your bid for the acquisition of the Buffalo Bills of the National Football League and in connection therewith, you provided Deutsche Bank with a recent certification of your financial statement which includes liquidity and asset value. copy of the letter is attached hereto as Exhibit (the DB letter)."
If we go back to your cover e-mail, why did you want an acknowledgment from Mr. Trump that this was not a commitment?
Deutsche Bank was not prepared or willing to increase its credit exposure to Mr. Trump at that time.
Q nd so do you have an understanding of what the purpose was of writing the letter to Morgan Stanley?
Morgan Stanley were looking for some kind of confirmation that Mr. Trump would be able to perform under any purchase agreement that he had to buy the Buffalo Bills.
Q If we look at the last paragraph of your e-mail, it states, "We got a certification of his financial status which documents the liquidity that was shown to us through statements, addresses, changes in his assets, liabilities and leverage ratio."
Just go to the last page in this document. Is this document the certification that you are referring to in your e-mail?

Yes.
Q Do you know who Jeffrey McConney is?
No.
Q It states at the top, "I, Jeffrey McConney, controller, do hereby certify to Deutsche Bank the accuracy of the following with respect to Mr. Donald J. Trump (DT). DT's current liquidity excluding any encumbered liquid assets, but including cash on hand as of June 30, 2014 is approximately $310 million."
Why did Deutsche Bank want this certification as to his liquidity?
We had loan agreements with Mr. Trump that had covenants requiring him to maintain liquidity and we wanted him to certify that he would be in compliance with those covenants.
Q Do you know if Deutsche Bank did any independent testing to confirm the 310 million number recommended here by Mr. McConney?
I do not know whether we did.
Q Item B states, "There have been no material decrease (in excess of ten percent) in the aggregate value of his illiquid assets since the financials were reported to Deutsche Bank as of June 30, 2013 that were certified by DT on October 30, 2013.
Why did Deutsche Bank want this certification from Mr. Trump?
gain, to be comforted, to receive confirmation that

there was no material change in his net worth and attesting to the value of the illiquid assets would be part of how the bank would be comfortable with that.
Q Did Deutsche Bank take any independent procedures to verify the accuracy of the representation contained in paragraph B?
No, not that I am aware of.
Q Same question. Why did Deutsche Bank want this representation as to any material decrease or -- why did Deutsche Bank want this representation C as to whether or not there were any material increase in excess of five percent in liabilities?
gain, it is a component of his net worth.
Q nd, to your knowledge, did Deutsche Bank undertake any independent procedures to confirm the accuracy of the representation contained in paragraph C?
I have no knowledge of us doing -- Deutsche Bank doing that.
Q For paragraph D, it states, "The ratio of total assets to total liabilities remains greater than 15X."
What -- could you explain what is meant by the ratio of assets to liabilities?
If one divides the total asset values by the total liabilities, you would end up with a number that's more than 15.
Q To your knowledge, did Deutsche Bank undertake any

independent procedures to verify this representation in paragraph D from the Trump Organization?
Not to my knowledge.
MR. W LL CE: Your Honor, at this time, we have nothing further of Mr. Haigh.
THE COURT: Nothing further at this time. Okay. Perfect break time.
fter the break, you'll cross-examine? Okay. See you in 15 minutes.
(Witness excused.)
(Whereupon, a recess was taken.)
(Continued on following page.)

THE COURT OFFICER: Come to order. ll rise. Part 37 is back in session. Please be seated and come to order.
Witness entering.
(The witness enters the courtroom and approaches the witness stand.)
THE COURT: Mr. Suarez, are you ready to cross examine the witness?
MR. SU REZ: Yes, Your Honor.
THE COURT: Proceed.
CROSS EX MIN TION
BY MR. SU REZ:
Q Mr. Haigh, good afternoon.
Good afternoon.
Q I'm Jesus Suarez. We met a number of months ago at your deposition.
Yes.
Q It's very nice to see you.
Mr. Haigh, you would agree with me that banks make money by lending money; correct?
That's one way of making one.
Q nd a goal of credit risk management is to make good risk decisions; correct?
Yes.
Q nd in doing so in analyzing risk, credit risk management considers a number of factors; correct?

Yes.
Q The purpose of doing so among others is to make sure that money lent gets repaid; correct?
That's correct.
Q nd among those factors are the nature of the collateral associated with the loan; correct?
Yes.
Q The quality of the collateral associated with the loan; correct?
It kind of goes along with the nature of the collateral, yes.
Q The loan's value ratio of the loan?
Yes.
Q The bank's lending history on that type of loan?
Yes, that's true.
Q The actual lending experience with the specific customer; correct?
That's also true.
Q The bank's experience in a particular industry; correct?
Yes.
Q The client's experience in a particular industry?
That's relevant as well.
Q The client's performance in a particular industry is that also relevant?

Yes.
Q Whether the client has a proven track record in a particular industry, is that something that's relevant?
Yes, that's relevant.
Q The borrower's debt profile, is that's something that's relevant, sir?
Yes, it is.
Q The guarantor's debt profile as well; correct?
Correct.
Q The primary source of repayment, that's a relevant consideration in risk analysis?
Yes.
Q s well as the secondary source of repayment?
That's one of them, yes, yes.
Q nd the tertiary source of repayment we heard earlier is also relevant?
Indeed and the fourth way out, if there is one as well.
Q nd the fourth way out.
nd that's a shorthand for source of repayment? It's a way out? It's an exit strategy for the bank?
Correct.
Q The likelihood of default is a relevant consideration; correct?
Yes, it is.
Q Borrower's liquidity is a consideration; correct?

Correct.
Q The guarantor's liquidity is a consideration; correct?
Correct.
Q Unpledged access owned by the guarantor are a consideration; correct?
Part of the analysis, yes.
Q nd whether the borrower has unpledged assets, those are also consideration?
Yes.
Q General economic climate is also a consideration?
Yes, that can be a consideration too.
Q There are many, many things that you consider when performing risk analysis; correct?
There are -- yes, there are, yes.
Q nd it's your job to weigh all of these factors when making a risk determination; correct?
That's correct.
Q nd you use your considerable experience in the field in order to reach those judgments; correct?
That's part of having research judgments, yes.
Q The other part includes inputs collected by other members of your team?
Yes.
Q s well as the opinions of other members of your team in reaching those judgments; correct?

Yes.
Q nd that would include information supplied by the lending group; correct?
That's part of it, part of the analysis, yes.
Q The judgment of the lending group plays into your risk analysis?
It has a role. We expect the lending group to have formed a judgment and to be supportive of the proposal.
Q nd earlier we talked about a relationship group as well, the frontline people; correct?
Relationship managers, yes.
Q The relationship managers.
nd the relationship managers they also provide input as to whether a transaction should occur or not occur; correct?
They have -- they certainly have an opinion, yes.
Q They certainly have an opinion.
nd that's an opinion that you consider in doing risk analysis?
Their opinions aren't likely to affect our fundamental risk analysis. It might affect whether we consider the exception or not.
Q nd these opinions and judgments made by the lending group are typically reflected in the credit memos?
That's the purpose of the credit memo is to collect that information together.

Q nd you expect that the information that's collected by the lending group is accurately reported on the credit memos?
Yes, I do.
Q nd then you typically review the credit memos in connection with your decision to support or not support the transaction?
That's correct.
Q nd in doing so you rely on what's in those credit memos; correct?
Yes, I do.
Q Let's look at the 2011 credit memo that was introduced by the plaintiff as Exhibit 293, please. We can pull that up on the screen. nd this particular credit memo relates to the transaction commonly known as the Doral transaction; correct?
Correct.
Q nd that was a loan to acquire a resort in what is now Doral, Florida; correct?
Yes.
Q Outside of Miami?
Yes.
Q I believe you told the ttorney General's Office that Vrablic and Scalzi were the relationship managers for this account?
Yes.
Q nd those are folks who worked in the private wealth

management group at Deutsche Bank?
That's correct.
Q They were your colleagues for a period of years?
Yes. We worked at Deutsche Bank at the same time.
Q You worked at Deutsche Bank at the same time during these transactions?
Right, right.
Q You regard them well?
Yes.
Q Their support for a transaction is something you would have considered?
They're both experienced relationship managers with a knowledge in credit.
Q The account manager, which I believe is Thomas Sullivan, reflected here, that's also somebody that you worked with at Deutsche Bank?
That's correct.
Q nd he's an individual with substantial experience in the lending business?
Yes.
Q nd his judgment that you would have considered in determining whether to support or not support this transaction?
It would have been a requirement that he did support it before we would sign off on it.
Q So Mr. Sullivan doesn't support the transaction it

wouldn't even get to your desk?
Correct or someone in his position.
Q Or someone in his position.
If Mr. Sullivan hadn't supported this transaction it wouldn't have come to your desk?
Correct.
Q nd the same question about Mr. Stafford and Ms. Schroeder who were the supporting lenders on this transaction. They were the folks that went out into the field and collected that information?
They were more junior lending officers, yes.
Q nd you would have relied upon what was communicated to you by them in this memo?
Yes.
Q nd you would have considered their judgment in connection with your risk analysis; correct?
s more junior officers of the bank their opinions would probably carry less weight than Mr. Sullivan's opinion, for example.
Q The law firm of Loeb & Loeb?
Loeb & Loeb.
Q Loeb & Loeb. That's how it's pronounced?
I believe so.
Q They were legal counsel to the bank in this transaction?

Correct.
Q nd Loeb & Loeb is a highly sophisticated law firm?
gain, I believe so.
Q You worked with them for a number of years; correct?
Correct.
Q nd they typically represented the bank well in these transactions?
Yes.
Q nd specifically in this transaction there is no reason to challenge their work?
None that I'm aware of.
Q I'd like to draw your attention to page one in the second paragraph in the section "Collateral."
nd we reviewed this -- you reviewed this earlier today in your testimony, so I'll move into the salient points where it says in the second line, "DJT," Mr. Trump, "intends to hold the property for the long-term benefit" -- "for the long-term to benefit from the strong cash flows and significant development opportunities." Do you see that?
Yes, I do.
Q Was the use of the collateral something that you would have considered in your risk analysis?
So in the sense of the use of the collateral is an integral part of the collateral itself and yes, so we would have looked at how the collateral is being used as part of the

analysis.
Q nd is the long-term appreciation of the collateral something that you consider in your risk analysis?
Not really, no.
Q Is the borrower's strategy for how to use that collateral over a long period of time something that you would have considered?
Only to the extent that it demonstrated some ability to improve the cash flow or value from the real estate. The long-term desired hold would have informed the likely length of the loan that we were willing to consider.
Q Well, certainly you wouldn't want your collateral to lose value over a period of time; correct?
We don't want it to lose value although we're aware that it may.
Q nd in this particular case are you aware that the Doral property is now worth more than a billion dollars?
I'm not aware of that.
MR. W LL CE: Objection.
Q If in fact it is worth more than a billion dollars now would you agree that the strategy or hold the property in benefit from strong cash flows --
MR. W LL CE: Objection.
Q -- succeeded?
THE COURT: I'm not sure -- are you objecting or

are you not objecting?
MR. W LL CE: I'm objecting.
MR. KISE: What's the objection?
MR. W LL CE: The objection is it assumes facts not in evidence of Mr. Suarez's testimony.
MR. SU REZ: I'm simply asking him a fact statement.
MR. W LL CE: If the defendants have evidence that it's worth a billion dollars, they can show --
THE COURT: Well, I'll allow hypotheticals, but other parts of the question may be of concern.
Would you like a read back or do you want to ask the same or similar question?
MR. SU REZ: Let me try to ask it differently.
Q If in fact the property is now worth over a billion dollars would you agree with me that Mr. Trump's long-term plan for the property succeeded?
Only if the cost to him of holding it over that period and the present value of the cost of funding and the cost of the improvements he made, only if that cost was less than the million or billion dollars that you are saying it's worth.
Q If you take a look on page one, it says " ssets Under Management." You can highlight that section.
See where it says "Donald J. Trump?"
Yes.

Q 20MM, that's million cash deposits?
That stands for 20 million, that's right.
Q nd part of the objective of the private wealth management group is to bring deposits into the bank; correct?
Correct.
Q That's part of its business purpose?
That's part of its business strategy, yes.
Q To develop the relationships with high net worth and ultra high net worth individuals?
To cover those individuals, to offer them banking deposits, investment products, loans, other products as well.
Q nd Donald J. Trump, Jr. here reflects as 100M in cash deposits?
Stands for 100,000.
Q 100,000.
nd these were facts that the bank considered in connection with preparing on the credit report; correct?
Yes.
Q nd the fact that private wealth management was building a client relationship with a high net worth client is also something that the bank considered?
The bank always wanted to be able to build what it called a relationship with a client, meaning that it wasn't just credit, but it did other things with that client as well.
Q If you turn to page three of this document, page three

in the section "Recommendation," says, "The facility is being recommended for approval based on" and then it lists the basis for approval; correct?
Yes, it lists those four bullet points.
Q nd those are the grounds upon which approval of the transaction is being recommended?
Yes. I mean, those are a summary, if you'd like, of the key points in favor of doing this transaction.
Q These are the important ones?
From the point of view of the lending officer who wrote the memo, yes.
Q When it describes the financial strength of the guarantor, you would agree with me that the financial profile of the guarantor it says there "includes, on an adjusted basis, 135 million in unencumbered liquidity;" correct?
Correct.
Q 2.4 billion in net worth; correct?
Correct.
Q nd approximately 48 million in adjusted recurring net cash flow; correct?
Correct.
THE COURT: I just want to make sure because the wording was a little strange. You're just asking him if that's what it says; right?
MR. SU REZ: Correct. In building on the fact that

this was a key point in their decision ultimately to support the transaction.

Q nd I just want to confirm that those are the numbers that the bank based its recommendation for approving the transaction?

Those are -- okay. Those are numbers after the bank had made adjustments, I think. I'm not sure about the 2.4 billion net worth. I'd have to read the memo again because we say adjusted liquidity of 135 million, but with the financial profile like that it was a recommendation to support this transaction.

Q nd that was the financial profile that the bank determined reflected the financial strength of the guarantor; correct?

Yes.

Q So I just want to draw your attention it was the adjusted basis that formed the basis of the recommendation, the adjusted basis of 135 million in unencumbered liquidity, 2.4 billion in net worth and 48 million in adjusted recurring net cash flow?

I mean, I see that language. I need to read through the memorandum itself to see whether the 2.4 billion in net worth is also adjusted, but I see the language there is just the position of the covenant, so.

Q Let's take a look at the next page of the document.

Do you see here where in the middle of the page it lists financial analysis and the second column reflects the client reported financial summary? nd the second column includes the DB adjusted column for the year ending 6/30/2011?

Yes, I see that.

Q The second column would reflect what the client reported from the bank; correct?

Yes.

Q nd the second column being Deutsche Bank's adjusted --

THE COURT: That's the third column.

Q The third column?

That's after Deutsche Bank had made adjustments.

Q fter Deutsche Bank had made adjustments.

nd in the first instance you've got cash marketable securities reported at 258.9 million and Deutsche Bank adjusted that to 135.8 million?

I see that.

Q So that's the number ported over the basis for the recommendation?

Correct.

Q nd in fact, if we scroll down to the section on liquidity it would tell you why Deutsche Bank made that adjustment; correct? nd we can walk through it. Do you see where it says "liquidity?"

I do, yes.

Q "On December 20, 2011, a structured lending team of Dave Williams and Emily Schroeder visited the offices of the guarantor and reviewed bank and brokerage statements that confirmed 178 million in cash balances and 51.8 million marketable securities, totaling 229.9 million held in the name of the guarantor. In addition, they also reviewed statements for operating companies that were wholly owned by the guarantor which evidenced another 29 million cash and marketable securities." Do you see that?

I do.

Q re you aware that Dave Williams and Emily Schroeder visited the client's offices?

That's what he claims I assume they did.

Q You assume they did you assume.

They had the opportunity to ask questions?

Correct.

Q Review documents?

Yes.

Q nd then report back in the credit memo their findings?

Yes.

Q nd if you go on to the next paragraph, it says, "The guarantor's personal liquidity is primarily" -- excuse me -- "has been primarily generated through ongoing distributions from his diversified portfolio of operating companies which is highlighted in more detail in the cash flow section below."

Do you see that?

Yes.

Q "Such distributions include cash distributions from the guarantor's portfolio of premier private clubs, which generated these distributions through operating profit along with the collection of membership deposits."

nd we'll have to scroll two more pages over because this page repeats. nd the memorandum it keeps going up here. This is the part I really wanted to draw your attention to, and it says:

"In accordance with industry standards, premier golf clubs require new members to post a non-interest bearing 30-year deposit as part of their membership requirement. Terms of the deposit agreement include that such deposits are nonrefundable for 30 years without condition, after which the member may request the refund for such deposits, often contingent on being replaced by at least one new member.

s of June 30, 2011, the total life-to-date balance of such deposits collected across the ten clubs owned by the guarantor was $188 million. Given the lack of any conditional rights by member, such" -- "by the member," excuse me, "such deposits are not recorded on the operating books of the club as a liability. The guarantor has indicated that they have received tax opinions supporting the treatment of such deposits and are not required to be included as part of the taxable

income, however for purposes of calculating adjusted liquidity, we have elected to include a 50 percent reserve ($94,000.000 representing 50 percent of the 188 million life-to-date deposit balance) against the reported liquidity." Do you see that?
Yes.
Q Does this reflect the bank had an opportunity to go to review the cash holdings and discount them appropriately for purposes of adjusting the value in its determination of the guarantor's liquid assets?
I don't know which accounts they looked at to form this conclusion about these particular assets. In other words, I don't know whether they were in separate accounts by themselves or were part of some other commingled account. Looks to me as though the lending officers were to some extent relying on information to be provided to them by the client's people in terms of how they were treated from a tax point of view.
Q But the determination to discount the reserve did not relate to the tax point of view?
I'm not sure about that. Normally with a cash deposit it was fully owned and unencumbered. We would take a very small haircut, if any. The fact that we're taking such a large haircut suggests to me we think there is some reason that this liquidity might not be there in the future and given that it states at the top these are deposited for a nonrefundable basis for 30 years and even then they may have to be replaced with a

new investment in the golf club, a new member, whatever it's called. The haircut we're taking suggests to me we think there may be some sort of tax liability attached to them.
Q But certainly the fact that the cash was generated from those membership deposits is clearly disclosed to the bank; correct?
Yes.
Q nd the fact that the bank had its own opinion as to how much of that liquidity it ought to consider was adjusted and then reflected in the financial analysis; correct?
The bank didn't did make that adjustment. That's correct.
Q Then going back to the prior page. If we go back to the chart with the statement of the financial analysis. I'd just like to point out again that the 258.9 is reduced to 135.8; correct?
Correct.
Q nd in the escrow and reserve deposits the bank took the client's reported number of 9.1 million and reduced it to 0?
Correct.
Q Correct.
In the real estate category you've got the client reported value of 2 -- of what is effectively $2,996,900,000; correct?
Correct.

Q nd the bank adjusted that net worth or that net equity number, excuse me, down to 1,000,737,900,000; correct?
Yes.
Q nd that was after the bank had an opportunity to review the client's real estate holdings in the matter reflected in the credit report; correct?
Yes.
Q nd if we would go to the page over which is page six of the PDF and scroll up to this chart here we see how the bank did that; correct?
That's correct.
Q nd I believe there were four properties that are listed as trophy properties; correct?
Yes.
Q The first one being Trump Tower; right?
Yes.
Q nd the client reported a value of 490 million for Trump Tower and Deutsche Bank reduced that to 380.2 million for purposes of reaching its adjusted value for that property?
Yes.
Q Niketown, same question. The client reported a value of 263.7 million and Deutsche Bank reduced that to 197 million for purposes of reaching the Deutsche Bank adjusted value?
Correct.
Q nd 40 Wall Street, the $524.7 million valuation was

reduced to 438 million by Deutsche Bank?
Yes.
Q nd in the case of the Trump Park venue, a similar reduction in value occurred; correct?
Yes.
Q 311 million went down to 206.3 million; correct?
Correct.
Q nd in the third column or fourth column, "property level debt" that stayed the same; right? The debt of the property continues to be the debt of the property?
Correct.
Q nd the following column lists the net equity reported by the client and in the following column the net equity reported by Deutsche Bank?
Correct.
Q nd in order to reach the DB valuation, Deutsche Bank had the opportunity to consult with the folks from the Deutsche Bank Valuation Services Group; correct?
Yes.
Q nd the Deutsche Bank Valuation Services Group I understand are an internal unit of the bank?
That's correct.
Q They're folks that have substantial experience valuing real estate assets?
Correct.

Q They're folks whose job includes not only providing I think what's been described as sanity checks on real estate numbers?

Most of the time their job is reviewing actual appraisals, criticizing those appraisals, signing off on the end product at the end of the day. This was more of I think the phrase we used might have been a sanity check on the numbers.

Transcript continues on the following page....

Q It was Deutsche Bank's opinion of what the value of those assets should be, correct?

It was Deutsche Bank's opinion of what the value of those assets might be.

Q Might be because, of course, we understand there could be a broad range of outcomes when you value an asset?

lso, we didn't have -- we, the bank, including its valuation services group, hadn't done all the due diligence that one would do in order to form an opinion of value in the sense of the opinion of value you see in an appraisal.

Q nd, of course, I understand an opinion of value in the valuation world has a very specific definition.

Correct. Right.

Q You, sir, are a surveyor?

Yes.

Q Which I understand across the pond in the United Kingdom is very similar to our appraiser?

Correct.

Q In fact, a RICS surveyor; is that correct?

That's the institution that certifies.

Q The Royal Institute of Chartered Surveyors?

Correct.

Q nd here, each one of these properties that was evaluated, the trophy assets was not pledged as collateral to the bank, correct?

That's correct.

Q In fact, there is an indication there of property level debt, right?

Yes.

Q The property level debt would be debt from other banks that attached to the respective properties?

Yes.

Q You would understand that, right?

We would be relying on information the client had reported to us that this debt existed.

Q nd the total outcome of the valuation of these four trophy properties was that the client reported number of 1,590,000,000 was reduced to 1,221,100 -- excuse me was reduced to 1,221,500,000.

Correct.

Q Which produced net equity from 1.326.4 million to 957.9 million?

That's also correct.

Q In order to adjust the valuation, so that from the bank's perspective it had a valuation that appears here, you consulted with the folks at Deutsche Bank evaluation?

On those four assets.

Q I believe that that's reflected lower in this document under the four trophy properties. It is goes through for these four assets how the values were adjusted, correct?

Correct.

Q Specifically with respect to Trump Tower, Deutsche Bank Valuation Services Group suggested a more appropriate -- what it believed a more appropriate cap rate in order to reach a value, correct?

Yes.

Q That formed the basis of Deutsche Bank's adjustment?

Correct.

Q nd in the Niketown, I don't believe the particular methodology was reported on the credit memo, but the result was that based on these reports square footage, Deutsche Bank Valuation Services Group indicated an adjusted value of 197; is that correct?

That's what's in the credit report. Like you, I'm not exactly sure how they reached that conclusion.

Q But that ended up being the value that was listed as a DB adjusted value?

Yes.

Q Then 40 Wall Street, the Deutsche Bank Valuation Services Group looked at that property and determined that a six percent aggregate was appropriate for purposes of adjusted value, correct?

Correct.

Q Based on that, it reduced the value of the property for purposes of Deutsche Bank's consideration to 1 --

Doesn't say on there.
Q Doesn't say it here, but if you look back up on the chart, it says it on the chart. It reduced to 438 billion which that was an equity of 278 million for purposes of the adjusted net equity, correct?
That's correct.
Q gain, the same adjustment took place with respect to the Trump Park venue; is that correct?
Yes.
Q nd in the Trump Park venue, there were discussions with Deutsche Bank Valuation Services Group that aren't disclosed here, but there were all of those discussions. There was a 35 percent haircut taken on the value?
That's correct.
Q nd in this instance, it appears from reading the credit report that Deutsche Bank had an opportunity to review the asset with the Deutsche Bank Valuation Services Group and apply an appropriate amount of a reduction?
s I said before, this was not a full appraisal. It was not based on due diligence, presuming it was based on information provided by the client on the size of the real estate, the leases and the rents.
Q But for Deutsche Bank's purposes, that was the number that you used?
Yes.

Q Let's back out of here. Zoom back into the club facilities. In the chart under real estate, you see a similar reduction was taken from the client report value of 1,315,000,000.
Looks to me the bank took a 50 percent reduction in the value and did not consult with the Valuation Services Group over that.
Q That's because the club facilities I believe I heard you earlier testify were hard to value?
I believe they are harder to value than of those other four assets that were individually looked at.
Q nd in a -- I think -- in extremis values produced could be very different, correct?
So in a -- in a loose stream market, whether it is a extreme market, the value could be generated from his club facilities to be very different from the value that he was carrying them at as the value there.
Q For that reason, the values were just halved?
Yes.
Q They were ball-parked?
Ball-parked, indeed.
Q nd the bank ballpark, those at having an estimate of -- an estimated net equity to did he 633 million, correct?
Yes.
Q nd in fact, they did something similar with the

properties under development 273.2 million and because properties under development may yield very different sale, the bank ball-parked it and said we are just going to consider 75 percent for the value of the net worth?
75 percent haircut which is a 25 percent of their value considered.
Q So you chopped off 75 percent of what the client reported about?
That's correct.
Q That's what went into the DB adjusted net equity?
Correct.
THE COURT: Ten-minute warning.
Q nd this was with respect to the real estate, how the client reported a valuation of 3,299.4 million was reduced to 2,040.4 million and after subtraction resulted in an adjusted net equity of 1,737.9 million?
That's the math, yes.
Q Then this is the number, the DB adjusted net equity of the real estate level that then carries over to the financial analysis on page four. Then produces the client reported value for real estate net equity to the DB adjusted value for real estate net equity, correct?
Correct.
Q nd in fact, the bank undertook a similar process of reaching its own judgment on the different asset value

categories for partnerships and joint ventures, correct?
Yes, it looks like a ballpark 50 percent reduction.
Q The bank reduced partnerships and joint ventures from 720 million to 360 million, correct?
Correct.
Q nd real estate licensing was reduced from 89.3 to 44.6?
Correct.
Q Other assets were reduced from 199.2 to 99.6, correct?
Correct.
Q nd after having the opportunity to consider the client reported assets, the bank reached a judgment for DB adjusted. Those assets would be reflected at a value of $2,377,900,000, correct?
Correct.
Q Ultimately, that math after the subtraction of other liabilities results in a net worth of 2,365,800,000 as adjusted by Deutsche Bank?
Yes.
Q This amount, it was that Deutsche Bank adjusted net worth, not the client reported net worth, that formed the basis of the statement in page three?
Which was --
Q Page three. That the financial strength of the guarantor included on an adjusted basis 135 million in

unencumbered liquidity, 2.4 billion in net worth, correct?
Correct.
Q nd approximately 48 million in adjusted recurring net cash flow, correct?
Correct.
Q nother basis for recommending approval of the facility was operating experience, correct?
Yes.
Q nd this summarizes the operating experience of President Trump, Mr. Trump here, DJT as having extensive experience in operating private clubs, correct?
Yes.
Q nd it goes on to say that his current portfolio includes 10 such clubs with a reported value of 1.3 billion and a DB adjusted value of 675 million?
Correct.
Q nd that would follow the same logic, correct?
Yes.
Q nd in fact, Mr. Trump, later President Trump, in fact had an extensive experience, correct?
I believe so.
Q That was a significant factor in recommending approval of the loan transaction?
Yes.
Q In the fourth reported basis for recommending the

facility, it says, "the expected enhanced value due to C PEX." One of the reasons that Deutsche Bank recommended to your approval of this facility was that the resort was world class location -- excuse me. The resort is a world class location that has been home to a PG event every year since the resort opened in 1962. That's correct, right, Mr. Haigh?
To the best of my knowledge.
Q nd that DJT expects to invest approximately 50 million on capital improvements and as a result, it is expected that the value of the collateral will increase significantly over the term of the facility, correct?
Correct.
Q nd on this basis, one of the reasons that Deutsche Bank was recommending approval to the loan transaction was, in fact, because it thought that the collateral would improve in value over a period of time, correct?
That was one of the reasons that the lending group put forward to us.
Q It was one of the 14 reasons?
Yes.
Q nd in fact, that turned out to be true as well?
I don't know for sure.
Q Well, then over the course of the credit reports, we'll see how that number -- the value of that collateral continued to increase as the guarantee was involved?

Correct.
MR. SU REZ: I think I am at a good stopping point, your Honor.
THE COURT: We will give everybody a break. Mr. Suarez, how much longer do you think cross will take.
nd then ttorney General, how long will your re-direct take?
MR. SU REZ: Your Honor, I think that working through the documents will take me at least as long as it took Mr. Wallace to work through the documents. I would expect to be able to do it throughout the course of tomorrow and early into the lunch break.
MR. ROBERT: Then I will have a few minutes as well.
THE COURT: Collectively, when might you expect to finish cross?
MR. SU REZ: Tomorrow afternoon.
THE COURT: Midafternoon, early afternoon?
MR. SU REZ: Midafternoon.
THE COURT: Okay.
MR. KISE: We may be able to bring Mr. Weisselberg back if that's the question, if that's what you're getting at. We will have him prepared, so they can continue with his examination.

THE COURT: Just so we know how much re-direct, if any, there will be.
MR. W LL CE: I expect I wouldn't need more than 10 or 15 minutes.
MR. KISE: We will have Mr. Weisselberg prepared and if it turns out we don't get to him, that's okay; but we won't leave the Court waiting without a witness, that's for sure.
THE COURT: That's the worse thing in the world.
MR. SOLOMON: I think finishing Mr. Weisselberg will be 30 minutes or so. Clearly, less than an hour. So depending when they're intending to finish this witness, we may want to have the next witness available for tomorrow late afternoon.
MR. KISE: We can do that.
MR. ROBERT: You want Mr. Birney here tomorrow, just tell us.
MR. KISE: Sure. I think that's optimistic given how past -- but, nonetheless, we can do it.
MR. ROBERT: If the ttorney General would just contact them and tell him to be here tomorrow afternoon, that's fine. Certainly, no objection from us.
THE COURT: Okay. See you at ten o'clock tomorrow.
MR. W LL CE: Thank you, your Honor.
MR. KISE: Thank you, Judge.

MR. ROBERT: Thank you.

(Whereupon, the trial was adjourned to October 12, 2023 at 10:00 a.m.)

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1016:4
$114 (1)
1064:23
$125 (1)
996:16
$150 (3)
996:6,15,16
$170 (1)
1044:25
$188 (1)
1090:20
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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al

NICHOL S H IGH, LLEN WEISSELBERG, P TRICK BIRNEY
October 12, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
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PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

Supreme Courthouse
60 Centre Street
New York, New York
October 12, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

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N. H IGH - CROSS (MR. SU REZ) Page 1110

THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, please be seated and come to order.

THE COURT: Tommy, you're getting better and better at that.

Okay. Supposedly, the witnesses are going to be brought earlier, so we have less time to wait. Can we get Mr. Haigh?

Counselors, anything to say, housekeeping?

MR. W LL CE: Plaintiff is prepared to continue.

THE COURT: Please.

MR. SU REZ: Thank you.

THE COURT: For those of you who weren't here yesterday or didn't hear about it, we are resuming the cross-examination of Mr. Haigh formerly of Deutsche Bank.

THE COURT OFFICER: Witness entering.

THE COURT: I will remind the witness as I always do that he is still under oath.

Mr. Suarez, would you like to continue?

MR. SU REZ: Thank you, your Honor.

N. H IGH - CROSS (MR. SU REZ) Page 1111

CROSS-EX MIN TION.
BY MR. SU REZ: (CONT'D)

Q Mr. Haigh, good morning.

Good morning.

Q Turning back yesterday to Plaintiff's 293, we were reviewing on page three the basis for recommendation of the Doral facility and I just wanted to close the loop on something here.

When we talk about the financial strength of the guarantor being based on the 48 million in part, the 48 million in adjusted recurring cash flow, do you see that number there?

Yes.

Q I wanted to make sure that that tied out to the 48 million in recurring net cash flow on page seven of this document which reflects in the second column the DB adjusted value for recurring net cash flow of 48.8 million, correct?

That's correct.

Q nd with respect to the expected enhanced value due to CapEx, again mentioned on page three of this document, as a basis for recommending the facility?

So I see that.

Q The second sentence, " s DJT expects to invest approximately 50 million on capital improvements, it is expected that the value of our collateral will increase significantly over the term of the facility." Do you see that?

I see that.
Q gain, on page nine of this document, that reflects the project overview in the third line of the second paragraph, "Upon acquisition, the guarantor intends to invest an additional 50 million to renovate and reposition the record to its previous world class standard."
Do you see that?
Yes, I do.
Q nd that's the basis of the statement on page three that the recommendation was made in part based on the anticipated investment by the guarantor into the property?
I see that, yes.
Q nd in fact, the guarantor ultimately invested more than the $50 million in the property?
I don't recall how much he ultimately vested.
Q Okay. We can get to that. Turning to Plaintiff's Exhibit 291, this is another document that you reviewed yesterday in your testimony, Mr. Haigh. nd I believe it's the originating memo for the facility on the Trump Chicago the 401 North Wabash?
Yes, that's correct.
Q The borrower in this transaction was an entity called 401 North Kabash Venture, L.L.C. correct?
Correct.
Q The lender was Deutsche Bank Trust Company merica,

correct?
Correct.
Q nd the guarantor is Donald J. Trump, correct?
Yes.
Q Eric Trump is not a party to this loan agreement, correct?
That's correct.
Q Neither is Donald J. Trump, Jr. correct?
That is correct.
Q Let me say that better. Donald Trump, Jr. is not a party to this loan agreement; is that correct?
That is correct.
Q DJT Holdings, L.L.C. is not a party to this loan agreement, correct?
So I'd have to look at the loan documentation itself to see who the ultimate parties ended up being. It is possible there were some changes between this approval and the final set of entities that signed the loan documentation.
Q t the time of the approval, there were no other parties to the agreement other than the Deutsche Bank trust company as the lender, Donald J. Trump as the guarantor and 401 North Wabash?
That was certainly the intention at the time this memorandum was approved.
Q DJT Holdings Managing Member, L.L.C. was not a party to

this agreement?
Like I said, I would have to look at the actual loan documents to see what entities became a party to the agreement.
Q Was the Trump Organization Inc. a party to this loan agreement?
s I said, I'd have to look at the loan documentation.
Q s part of the underwriting reflected in the credit report, the Trump Organization Inc. was not a party to the transaction, correct?
That's correct. Per the credit report, the Trump Organization was -- as an entity was not one of the either the borrower or the guarantor.
Q nd pursuant to this credit report at least, DJT Holdings, L.L.C. was neither the borrower or the guarantor?
I agree with you, yes.
Q The same for DJT Managing, L.L.C.?
It is not in the credit report.
Q The same for the Trump Organization, L.L.C.?
It is not on the credit report.
Q The same for 40 Wall Street, L.L.C.?
It is not on the credit report.
THE COURT: Mr. Suarez, why don't you just ask if there are any other parties instead of asking ten different entities whether they are a party? Wouldn't that work?
MR. SU REZ: I think the first one, if I may, Your

Honor, may take me a little bit longer and then on the following ones, I have a script to cut it down.
THE COURT: I also suggest, again, not to ask negative questions. He didn't do it, did he, and then you don't know whether yes or no. Just did he do it? No. Okay.
Q Per the credit report, Trump Endeavor, 12, L.L.C was not a party to this loan agreement?
Per the credit report, it is not a party.
Q Trump Old Post Office is not a party to this transaction, correct?
Per the credit report, it is not a party to this transaction.
Q Okay. The 401 North Wabash transaction, which we referred to as the Chicago transaction, had two components, correct?
Yes.
Q Facility , we can scroll down. The collateral for facility was a first mortgage lien and a first priority security interest in the residential component of the building known as the Trump Chicago?
Yes.
Q nd that included residential condominium units that were not sold, correct?
That's correct.

Q That were owned by the borrower, correct?
Yes.
Q s those condominium units were sold, that facility was paid down, correct?
Yes.
Q nd in the second facility B, the collateral was a first mortgage lien and first priority security interest in the commercial point of the Trump Chicago, correct?
That's correct.
Q That included a lien on a full-service hotel within the Trump Chicago that had 339 condo hotel rooms of which 175 were owned by the borrower, correct?
Yes.
Q The purpose of this loan, Mr. Haigh, was to refinance another performing Deutsche Bank loan, correct?
It was to refinance another Deutsche Bank loan, yes.
Q Deutsche Bank was familiar with the collateral, correct?
Certain members of Deutsche Bank -- the group that originated that prior loan were clearly familiar with the collateral and people within the wealth management business became more familiar with the collateral as they did their due diligence.
Q The Deutsche Bank loan that was refinanced through this transaction was a performing loan, correct?

I don't know.
Q Does the credit report suggest anywhere that the refinanced loan from Deutsche Bank was not a performing loan?
So there's no reference to the credit report that it was not performing at the time.
Q There is no reference in the credit report that the prior loan was not performed?
Correct. There's no indication that it was not performing.
Q Correct. Thank you.
If we could turn to page five. The basis for recommendation of this facility included the quality and collateral -- excuse me. The quality of the collateral and the loan to value, correct?
Yes.
Q This was the first basis identified for the facility being recommended, correct?
Yes.
Q t inception, the collateral was anticipated to be 36 percent on one and 44.7 percent on both tranches, correct?
So it says here that the loan to value, expected loan to value on the commercial transaction was 36 percent and overall between the two, the loan to value was just under 45 percent.
Q In fact, if we go to page two, you'll see it appears to

be omitted here, but this was brought over for the reason -- for presentation up top, it says facility and at the end of that paragraph it says the expected LTV as closing date is the 55 percent?
Yes.
Q The expected LTV on closing date is 36 percent?
Correct.
Q Which is now in the recommendation that ports over to an aggregate expected LTV of 44.7 on closing?
Correct.
Q That's a relatively low loan to value, correct?
Depends what you're comparing it to. So I would say it's slightly low loan to value for a condo inventory deal when a condo is being emptied and being sold. It is lower than what you would expect, say, on an office building.
Q The Doral transaction by comparison had a loan to value at inception of 85 percent, correct?
Correct.
Q So the Chicago transaction comparatively had a lower average loan to value of nearly half?
Certainly much lower than the Doral transaction.
Q Going back to page five, as the basis for recommendation, we again have the financial strength of the guarantor and it includes the financial profile of the guarantor includes on an adjusted basis 146 million in unencumbered,

correct?
Yes.
Q 2.4 billion in net worth, correct?
Correct.
Q nd approximately 13 million in adjusted excess recurring net cash flow, correct?
Yes.
Q Those numbers reported over from Deutsche Bank's own analysis as reflected in the credit report, correct?
Yes.
Q They're, in fact, DB's adjusted values and we can walk through them quickly. On page seven, you see again on the fourth column a client reported net worth of $4,559,000,000, correct?
That is correct.
Q nd a DB adjusted client net worth of 2,436.1, correct?
That's correct.
Q It was the DB adjusted value that was ported over as a basis for recommendation?
Yes.
Q Or I should say carried over as a basis for the recommendation, correct?
Correct.
Q nd the same is true of the excess recurring net cash flow of 13 million? That's a number that came from DB's own

analysis at page ten of this report, correct?
There it is. 13.4 million on page ten.
Q 13.4 million which was the DB adjusted net excess cash flow, correct?
That's correct.
Q Going back to page five, another factor for supporting the facility was the operator's experience in operating this property type, correct?
That is correct.
Q nd that's a reference to Mr. Trump, correct?
Yes.
Q It says that he's a well-known and experienced operator of properties of this type, correct?
That is correct.
Q Then again, another factor was increasing Deutsche Bank's relationship with Mr. Trump and his affiliates, correct?
Yes.
Q In page seven, I'd like to draw your attention to, again, analysis of the guarantor's balance sheet and below it, it states that on October 19, 2012, Tom Sullivan and Emily Schroeder visited the offices of the guarantor, correct?
Correct.
Q You were not present at that meeting, correct?
I was not present at that meeting.
Q But you are aware that based on the result of that

meeting, DB made certain adjustments to the resulted -- excuse m-e. To the reported values on the credit report, correct?
Yes.
Q Then turning over to page eight, we again see a valuation of the four trophy properties that included the Deutsche Bank Valuation Services Group analysis that we discussed yesterday, correct?
Correct.
Q nd Deutsche Bank Valuation Services Group performed the same type of analysis for these properties as that which we discussed yesterday, correct?
I believe so.
Q That is what's reflected in this document, correct?
Yes.
Q nd you signed this document, correct?
I did.
Q Page ten of this document, there are certain key ratios that are discussed here at the bottom and it states, "To demonstrate the strength of the guarantor, we have applied the unsecured lending guidelines assuming repayment of the obligation by the guarantor using DB adjusted balances to both the balance sheet and the net cash flow," correct?
That's correct.
Q That means that when the key ratios were computed, the inputs that were put in were the DB adjusted values, correct?

Correct. The DB adjusted values were the inputs.
Q Turning over to Plaintiff's Exhibit 290, this is the 2013 credit report, correct?
Yes, it is.
Q document that you signed, correct?
Yes, I believe so.
Q nd the reason for this document was to modify the Trump Endeavor 12, L.L.C. loan facility, correct?
Yes.
Q Proven interest rate swap?
Yes.
Q Review the Trump Endeavor 12, L.L.C. loan facility?
nnual review, that's correct.
Q nnual review and to request a change of the annual review date to July 30, 2014, correct?
Yes.
Q nd at this time, Trump Endeavor 12, L.L.C. had been substituted as the borrower in the Doral transaction, correct?
I believe so, yes.
Q I should say by this time. When we reviewed it in 2011, it said to be determined?
Right.
Q nd by now, we know that the borrower in the Doral transaction was Trump Endeavor 12, L.L.C., correct?
That is the actual legal entity.

Q So with respect to the Doral transaction, you would agree with me that the borrower was Trump Endeavor 12, L.L.C.?
That was the borrower, yes.
Q nd the lender was Deutsche Bank Trust Company mericas?
Yes.
Q nd the guarantor was Donald J. Trump?
Yes.
Q nd no other party was a borrower, a guarantor or a lender?
No other party is mentioned in the credit report. I would have to look at the loan documentation to see whether there were any other parties actually on the loan documentation.
Q Understood. If there were other parties on the loan documentation, would you expect to see them identified on the credit report?
Most likely, yes.
Q This credit report dated July 24, 2013, you would agree with me, reflects that the Doral loan was performing?
Yes, I believe so. Yes.
Q There were no missed payments correct?
Not to my recollection.
Q No late payments?
Not to my recollection.
Q That's something you would expect to see in the credit

report?
Yes.
Q nd we would agree that the credit report doesn't identify any missed payments or late payments, correct?
That's correct.
Q If you could turn to page four of the credit report, please. The credit report provides for a modification of the Doral loan transaction, correct?
Yes.
Q nd it indicates that the maximum loan to value would determine the guaranty level going forward, correct?
Yes.
Q So when the collateral appraises over a certain loan to value, the guaranty level goes stepping down, correct?
That is correct.
Q Stated differently, as the loan to value ratio is reduced with respect to the Doral loan, there is a corresponding reduction in the amount of the guarantee, correct?
Correct.
Q For example, when the loan to value is below 65 percent, the guaranty level drops to 40 percent, correct?
That's correct.
Q When the loan to value is below 55 percent, the guaranty level drops to 20 percent, correct?
Yes.

Q When the loan to value is below 45 percent, the guaranty level drops to ten percent, correct?
Yes.
Q nd when the loan to value is below 35 percent, the guaranty level is zero, correct?
Correct.
Q On page five of this credit memo, we also see approval of a change in the net worth covenant, correct?
Yes, that's correct.
Q nd in fact, it provides that as the guaranty level is reduced, the net worth covenant is also reduced, correct?
That appears to be correct, yes.
Q So that when the guaranty level is at 100 percent, the net worth covenant is 2 and-a-half billion, correct?
Yes.
Q When the guaranty level drops to 40 percent, the net worth covenant is only 1 billion, correct?
Yes.
Q When the guaranty level is at 20 percent, the net worth covenant is only 500 million, correct?
Yes.
Q When the guaranty level is at 10 percent, the net worth covenant is 250 million, correct?
Yes.
Q nd when the guaranty level is at zero, there is no net

worth covenant, correct?
Correct.
Q little further down, page five, again, we see that the modification to the facility is being recommended for approval based on we see the financial profile of the guarantor which includes on an adjusted basis 146 million in unencumbered liquidity, correct?
Yes.
Q nd that's the DB adjusted value, correct?
Yes.
Q nd that's the DB adjusted value that's carried over from page seven of the credit report, correct?
Yes.
Q nd we see 2.4 billion in net worth again is a basis -- as a basis for the recommendation, correct?
That's correct.
Q nd that $2.4 billion figure is the DB adjusted value, correct?
That is correct.
Q nd that's the DB adjusted value that's reflected in page seven of this credit report, correct?
Yes.
Q nd again, with respect to the 13.4 million in adjusted recurring net cash flow, that's also based on DB's own analysis at page nine of this credit report, correct?

Yes.
Q n additional factor for recommendation here is also an equity injection by the guarantee, correct?
Yes.
Q It states that while the initial injection of the guarantor was estimated at 50 million, we have been told that the estimate has been increased to anywhere from 150 to 160 million with approximately 30 million already invested, correct?
That's correct.
Q nd again, on the following page of this credit memo, yet another basis for recommendation is that the LTV levels required and it says "to for." I think it probably should say the LTV is required for a decrease in the guaranty levels are low enough to ensure that the is more than adequately collateralized; right?
Correct.
Q gain, initial bases are the operating experience of the operator and the enhanced expected value due to capital improvements, correct?
Yes.
Q nd with respect to increasing the relationship between Deutsche Bank and President Trump and his relationship, that was something that was important to the private wealth management group, correct?
That was something that was? I didn't hear.

Q Increasing the relationship with President Trump and his group, correct?
It was important? Was that your question?
Q Right.
Yes, it was one of the aims of the private wealth management business to increase its business relationship with all of its clients. That was not President Trump at the time, but --
Q Correct. With Mr. Trump later President Trump?
Yeah.
Q nd one of those metrics that was important to the bank was an increase in the assets under management, correct?
Yes.
Q nd here, in the first page of this document, we see that the assets under management have gone up from 20 million to 29.7 million, correct?
Yes.
Q nd again, this credit report reflects on page seven that there was an October 19, 2012 due diligence meeting that took place, correct?
Yes.
Q nd that based on that meeting, DB adjusted values in the credit report, correct?
Yes.
(Continued on the next page.)

Q nd when I refer to "DB," I'm obviously referring to Deutsche Bank. That's understood?
Thank you.
Q nd again on page eight, we see the same analysis of -- provided by the Deutsche Bank Valuation Services Group as we see in prior credit reports?
That's correct.
Q nd on page nine we see a similar analysis of the free cash flow prepared by Deutsche Bank; correct?
Yes.
Q nd on page ten we see that the DB adjusted balances to both the balance sheet and the net cash flow were used to compute the key ratios by Deutsche Bank; correct?
Correct.
Q Turning to PX 294.
MR. W LL CE: Your Honor, I'm sorry. I apologize for interrupting. We entered Exhibit 290 into evidence. I don't know if they don't want to because of statute of limitation parameters, but given the discussion with Mr. Haigh, we would ask that it be entered into evidence.
THE COURT: ny objection?
MR. KISE: No, there is no objection. The only thing I want to note for the record because of the anomaly because we are introducing something prior to the statute of limitations is we are doing this basically because we have

to because the Court has allowed other evidence in and this is just evidence to meet -- the evidence that the government has presented. But this is in no way a waiver of our statute of limitations objection.
THE COURT: Of course. Understood.
MR. KISE: Thank you.
THE COURT: nd it's in evidence.
MR. KISE: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 290 in evidence.)
Q Turning to PX 294.
Mr. Haigh, you'd agree with me this is an annual review of the Trump Endeavor 12 LLC loan facility?
That's one of the reasons.
Q nd another reason is an annual review of the Chicago loan facility with the borrower is 401 North Wabash Venture LLC?
Together with an increase in that facility.
Q nd then there is also an approval of the $170 million facility for the borrower Trump Old Post Office LLC?
That's correct.
Q The annual review of the Doral loan reflects that there are no missed payments; correct?
I believe that's correct.
Q That there are no late payments; correct?

I believe that's correct.
Q nd that the Doral loan is a performing loan at this point; correct?
I believe so, yes, yes.
Q The same for the Chicago loan facility. The review reflects that there were no missed payments; correct?
Correct.
Q No late payments; correct?
Correct.
Q nd that it is a performing loan; correct?
That's right.
Q With respect to the now third facility, this is $170 million first mortgage to the borrower Trump Old Post Office LLC that is to be used for the development of the Old Post Office property in Washington, D.C.; correct?
Yes.
Q The borrower in that transaction is Trump Old Post Office LLC; correct?
Yes.
Q nd the lender is Deutsche Bank Trust Company mericas; correct?
Yes.
Q nd the guarantor is Donald J. Trump; correct?
Yes.
Q This credit report suggests that there are no other

parties to that transaction; correct?
If that's what the credit report suggests it's probably correct.
Q nd we can see further down page one in the review of each loans that the Doral facility reflects a loan to value of 85 percent; correct?
Yes.
Q That the Trump International Hotel and Tower reflects a loan to value of 51 percent; correct?
Yes.
Q nd that the Old Post Office reflects a loan to value of 80 percent; correct?
That's correct.
Q Turning to page ten of this document we again see the basis for recommendation for the approval of the annual reviews and the origination of the Old Post Office facility; correct?
Yes.
Q nd with respect to the financial strength of the guarantor now under year 2014 this again is based off of the DB adjusted values for net worth of 2.6 billion; correct?
Yes.
Q nd 154.5 million in unencumbered liquidity per the DB adjusted values; correct?
Yes.
Q nd those DB adjusted values are reflected again in the

credit report. First on page 14 of this document you'll see there the DB adjustment to the guarantor's net worth reflects an adjustment from the reported -- client reported value of four billion nine hundred seventy-eight million to a DB adjusted value of two billion six hundred forty-five million; correct?
Yes.
Q nd that's the number that then carries over as a basis for the recommendation at page ten of this document; correct?
Yes.
Q nd the same is true of the 154.5 million in liquidity. That is a number that carries over from page 14 of this document into the basis of recommendation at page ten; correct?
Yes.
Q nd again, a basis for recommendation of both the new facility and the approval of the annual review was Mr. Trump's extensive experience in operating private wealth and country clubs; correct?
That was relevant in particular to the Doral facility.
Q nd again, it reflects that the portfolio of 13 such clubs had a reported value of 1.66 billion but DB had adjusted that value to 680.6 million; correct?
Yes.
Q nd the DB adjusted value was the number that DB relied upon to approve the facility; correct?
Yes.

Q With respect to Facility , we again see there is an equity injection by the guarantor that was originally required to be 50 million but ended up being budgeted to increase to 150 to 160 million with approximately 30 million already invested; correct?
Yes.
Q nd that must enhance Deutsche Bank's collateral; correct?
One would expect so.
Q nd that in fact is what the credit report says that it was expected to enhance the collateral due to the capital investment; correct?
Yes.
Q Page 13 again reveals that in 2013 there was a meeting at -- page 14. I'm sorry.
t page 14 there was a meeting on October 21, 2013. Tom Sullivan and Emily Schroeder visited the offices of the guarantor; correct?
Yes.
Q You were not present at that meeting; correct?
I was not there.
Q nd based on that meeting asset values were adjusted on this credit report; correct?
That's correct.
Q Page 15 of this document again shows the analysis of

the trophy properties with input from the Deutsche Bank Valuation Services Group; correct?
Yes.
Q nd that analysis was used to adjust asset values by Deutsche Bank; correct?
Yes.
Q nd on page 16 we again see that Deutsche Bank performed its own net cash flow analysis; correct?
So DB adjusted the cash flow the client had reported, that's right.
Q Okay. nd they do that every year as the credit memos go on?
I think that's correct.
Q On page 17 we again see that the key ratios are computed this year based on the -- the Deutsche Bank adjusted balances to both the guarantor's balance sheet and net cash flow; correct?
Yes.
Q On page 21 of this document with respect to the Old Post Office transaction, a feature of the loan facility, page 21, the fourth paragraph, it says:
"Per the borrower, the full renovation budget is $215 million with the borrower's 20 percent being deployed prior to the lender's fund."
That's the defined equity amount; correct?

Yes.
Q nd this means that the borrower was obligated to inject its own cash into the project before Deutsche Bank advanced the first dollar under the loan facility; correct?
Yes. It means it actually has to use its first $20 million before Deutsche Bank's funding would start.
Q I'm sorry?
It has to use that $20 million in the project before Deutsche Bank's funding starts.
Q Correct. In other words, the guarantor had to utilize 20 million of his own dollars in the project before Deutsche Bank would start advancing under the credit facility?
Correct, yes.
Q nd that's in fact what happened; correct?
I believe so, yes.
Q nd this document at page six also approves a similar stepdown feature on the guaranty for the Chicago credit facility; correct?
Yes.
Q nd again, the approval provides that -- withdrawn. s a result of this approval, Mr. Haigh, the guaranty level is reduced as the loan to value of the Chicago loan is reduced; correct?
Yes.
Q So that when the loan to value of the Chicago loan

falls below 65 percent, the guaranty level is only 40 percent; correct?
Yes.
Q nd when the loan to value of the Chicago loan falls below 55 percent, the guaranty level is only 20 percent; correct?
That's correct.
Q nd when the loan to value of the Chicago loan drops below 45 percent, the guaranty level is only ten percent; correct?
That's correct.
Q nd when the loan to value of the Chicago loan drops below 35 percent, the guaranty level is zero; correct?
That's correct. ll those numbers are predicated on the entire loan being below $45 million.
Q nd in fact, the entire loan went under $45 million as the condo units were being sold; correct?
I -- assuming Tranche did. I don't recall regarding Tranche B.
Q But certainly that was the stepdown feature of the loan?
Yes.
Q nd again, we see a similar stepdown feature as we saw with the Doral loan on the net worth covenant; correct?
Yes.

Q nd that's reflected on page seven of this document where we again see on the Chicago loan once the guaranty level is reduced to 40 percent the net worth covenant is only $1 billion; correct?
That's correct.
Q nd when the guaranty level is 20 percent the net worth covenant is only $500 million; correct?
Yes.
Q nd when the guaranty level falls to ten percent or below the net worth covenant is only $250 million; correct?
That's correct.
Q nd with a guaranty level on the Chicago loan at zero percent the net worth covenant then is zero?
Yes.
THE COURT: I haven't heard a very frequent objection yet, "the document speaks for itself."
We're going over things that are , redundant; B, obvious; and C, the document says what it says. Most of this testimony seems to be "isn't that what it says" when we can all read, so I don't understand why we're spending so much time on this.
Mr. Kise?
MR. KISE: With all due respect, that's basically what Mr. Wallace did all day yesterday is to walk through the document, showed him provisions that say isn't that

correct, is that incorrect. I mean, that was basically the whole day yesterday so I think it's fair for the record that we're entitled to clean out things that the government didn't just like they pointed out things like we might not bring up.
nd Mr. Suarez is moving along pretty rapidly. I don't think we'll have anymore documents to go. We're certainly not going to take as much time as the government took with this witness. I think it's only fair that we make our record.
THE COURT: Mr. Wallace, did you do that yesterday?
MR. W LL CE: I believe we tried to establish facts on early documents and then introduce the later documents being consistent with the earlier documents. I am not objecting because we were going to give them some time to establish what they're doing. I agree. I thought Mr. Suarez had already established that the net worth covenant dropped as the guaranty level went down, but it's his case to try and make it his way. We would definitely appreciate moving things along more quickly.
MR. KISE: He won't bring that up again.
THE COURT: Okay. Continue as you were.
MR. SU REZ: Thank you.
Q Moving along to Plaintiff's Exhibit 298.
Mr. Haigh, this document which you had an opportunity

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to review yesterday is a review of the Trump Doral Chicago and Old Post Office loans in the year 2015; correct?
Yes.
Q nd this credit report reflects that the three loans are performing; correct?
Yes.
Q That there are no missed payments; correct?
None that are referred to in here.
Q nd you would expect to see a missed payment referred to in the credit report; correct?
Most likely yes; unless it was completely de minimis, nothing, no.
Q nd you would expect to see a late payment reflected in this credit report?
Most likely. I mean, it's possible if a client had made a payment a few days late it might not have been referred to in the report.
Q Certainly nothing material?
Nothing material. I agree.
Q nd there are no material late payments reflected?
None that I'm aware of.
Q nd by all measures indicated here the loans appear to be performing; correct?
Yes.
THE COURT: Let me just add one other thing.

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I believe I said in the September 26th decision and order very clearly there were no defaults, everything was paid, everything was paid on time.
Let me ask the ttorney General's side, were there any defaults on any of these loans that you're aware of?
MR. W LL CE: That I'm aware of sitting here today, no.
THE COURT: No.
MR. W LL CE: nd actually --
THE COURT: ny late payments, any complaints?
MR. W LL CE: On payment issues, no.
THE COURT: Maybe we can save some time and not ask was it a performing loan. Were they all performing loans?
MR. W LL CE: I think we have issues with some of the covenants and whether they were. The answer is -- I don't want to get into it in front of the witness, but we would take issue on some of the covenants.
THE COURT: Okay.
ll right. Let's continue.
Q Mr. Haigh, the date of this report is July 20, 2015; correct?
Yes.
Q nd if we could turn to page four, please.
I'd like to point out in page four in the box "guaranty" it states: "Donald Trump's personal guarantee may

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have been eliminated due to the fact that the facility LTV is below the 35 percent threshold. Based on the latest appraisal completed, the hotel collateral was valued at $133 million which results in a 34 percent LTV."
Is that your handwriting there, Mr. Haigh?
Yes, it is. I think so.
Q nd you would agree with me that this credit report reflects the fact that as of July 20, 2015, Mr. Trump's personal guaranty with respect to the Chicago property has been extinguished?
It looks that way. I don't know whether it was ever captured in the actual documentation, but certainly from a credit point of view we were willing to do without the personal guarantee.
Q In other words, it does; correct?
From my credit approval point of view, yes.
Q nd you signed the credit report?
Yes.
Q If you signed the credit report it meant you approved it; correct?
Yes.
Q Turning to page six of this document.
gain, we see a recommendation that the annual review for the Doral, Chicago and OPO facilities be approved; correct?
Yes.

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Q nd as in prior years the net worth of the guarantor of $2.7 billion is based on Deutsche Bank's own adjusted values; correct?
That's right. Those are Deutsche Bank's adjusted numbers.
Q nd the 285 million in unencumbered liquidity, that's also based on Deutsche Bank's adjusted values; correct?
Yes.
Q nd the same is true with respect to the operating experience of the -- of Mr. Trump; correct?
s I said, that applies mainly to the Doral facility.
Q It applies mainly to the Doral facility, but it is in a section described as "all facilities;" correct?
It is in a section described as "all facilities."
THE COURT: Let me ask this: It says "all facilities." Does that mean that each of these bullet points applies to all facilities or you just listing all the facilities basically?
THE WITNESS: I think the writer of the credit memo tried to summarize it. These are the overall strengths of the transaction for all the facilities. Personally, I don't think that the operating experience on resorts and golf clubs has much relevance to construction projects, for example.
THE COURT: Okay. Thank you.

Q But then we do see in the following page the recommendations basis -- the bases for recommendations for approval of the annual report for each of the different facilities; correct?
Yes.
Q nd these are the loans that apply to each specific facility; correct?
Yes.
Q ll right. nd with respect to Facility and Facility B, it says "the LTV levels require to for." gain, I believe it meant to say "the LTL levels required for a decrease in the level. Guaranty levels are low enough to ensure that the loan is more than adequately collateralized as evidenced by the current Facility B in which the guaranty was eliminated once the loan was paid down to $45 million;" correct?
Correct.
Q nd that was the paydown that you referred to earlier; correct?
So that -- I mean, that would be really the evidence I'm assuming that the loan on Facility B which was in two tranches was paid down in total to below 45 million.
Q nd as a result, the guaranty was eliminated?
For Facility B, yes.
Q Okay. nd Facility B is the Chicago loan; correct?
That's right, yes.

Q nd again, with respect to Facility B, it establishes that the collateral was valued at 133 million which resulted in a 34 percent LTV?
That's right.
Q nd that valuation is done based on DB's own ordered appraisal; correct?
Yes.
Q In other words, to compute the loan to value ratio and any changes in the loan to value ratio Deutsche Bank orders an appraisal for itself to confirm that?
Yes.
Q On page ten of this credit report -- oh, excuse me. Let's turn back to page seven for a second. I'd also like to draw your attention to Facility C, which is a Trump Old Post Office; correct?
Yes.
Q nd here it confirms that as of June 2015, the guarantor, Mr. Trump, completed the required 20 percent equity investment and began to draw on the facility; correct?
Yes.
Q nd that means that the bank would have concluded that President Trump, Mr. Trump, at the time had put in the money he had required to put into the project and permitted him to start drawing into the project; correct?
That's correct.

Q In page ten of this document, again, we see the adjustments -- I'm sorry.
On page 11 we see that the Deutsche Bank Valuation Services Group has had an opportunity to review the trophy properties; correct?
Yes.
Q nd the DB adjusted values are reflected as a result of those evaluations; correct?
That's correct.
Q nd in page ten, I'd just like to point out that again. It says up at the top, "guarantors." It says "as part of the underwriting we have met with several members of the family update" -- excuse me -- "of the family office to update our due diligence on the client reported financial information."
Do you see that?
Yes.
Q You were not present at those meetings; correct?
I was not present at those meetings.
Q But as a result of those meetings, though, the Deutsche Bank adjusted the value of assets on the financial analysis; correct?
Yes.
Q s reflected in the credit memo?
Yes.
Q Okay. Let's take a look at a document that has been

marked for identification as Plaintiff's Exhibit 2960.
Do you recognize this document, Mr. Haigh?
Yes.
Q What is this document?
It's an amendment to a prior credit approval.
Q nd if you see on page four of this document it bears your signature?
Yes.
MR. SU REZ: We'd like to move, Your Honor, Plaintiff's Exhibit 28960 into evidence.
MR. W LL CE: No objection.
THE COURT: Granted. It's in evidence.
MR. KISE: Same reservation as before, Your Honor.
THE COURT: Understood. Still reserved.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2969 in evidence.)
Q Page one of this document, Mr. Haigh, "reason for presentation." Do you see the third bullet point it states, "request approval to reduce personal guaranty level from 100 percent to 10 percent based on the most recent appraised value and overall LTV percentage." Then it says in italics "this change was contemplated at the loan's origination."
I see that.
Q nd this refers to Trump Endeavor 12 LLC; correct?

Yes.
Q nd ultimately this request was approved; correct?
Yes.
Q nd the date of this document is ugust 3, 2015; correct?
Yes.
Q nd with respect to the Doral loan as a result in the change of the guaranty level from 100 percent to ten percent, the net worth covenant on the Doral loan is now $250 million; correct?
Sorry. Would you repeat the question?
Q Yes. s a result of the approval of the reduction in the personal guaranty level from 100 percent to ten percent based on the most recent appraised value in overall loan to value percentage, the net worth covenant on the Doral loan is now $250 million; is that correct?
We're not changing the net worth level by making that amendment. We're changing the amount of the guaranty that would -- that would cover us.
Q Correct, but if we go back to the stepdowns that we went through earlier?
Okay. That's what you're referring to?
Q That's what I'm referring to.
Then --
Q nd we can pull it up again, if you'd like?

I'll agree that that's the case, yes.
Q But you would agree that once the stepdown to a ten percent guaranty level was approved the net worth covenant followed with it and went down to 250 million; correct?
Yes.
Q nd then I'd also like to draw your attention in this document to the "assets under management" in page two of this document. Do you see where it says "assets under management?"
nd it reflects now again that the relationship between President Trump and Deutsche Bank continues to grow.
Donald J. Trump, President Trump, has 31.295 million in cash deposits; correct?
Yes.
Q nd entities associated with him have now deposited over 86.49 million in cash deposits; correct?
Yes.
Q So all in all, President Trump and entities associated with him at this point have deposited over $100 million in Deutsche Bank; correct?
Yes.
Q nd those are assets under management by the private wealth group; correct?
Those are deposits at Deutsche Bank, yes.
Q Which the credit report reflects as assets under management; correct?

They're reflected in that section that says "assets under management," yes.
Q Going back to page one of Plaintiff's Exhibit 2960.
We see the market value of the Doral Golf Resort & Spa has increased to 366 million based on a Cushman & Wakefield appraisal dated July 29, 2015; correct?
Yes.
Q nd that would be an appraisal that Deutsche Bank ordered for its own purposes; correct?
I'm not sure that it did. I think there is a note in here that says Deutsche Bank did not order that appraisal for some purposes in the italics above this section.
Q But it would have been an appraisal that Deutsche Bank received; correct?
I imagine Deutsche Bank did actually receive that appraisal.
Transcript continues on the following page.....

Q It would have been --
MR. SU REZ: I withdraw the question.
Q nd the result of the appraisal, the loan to value was reduced to 34 percent, correct?
Yes.
THE COURT: Ten-minute warning.
Q If we turn to page three of this document, we see in the recommendations, "approval based on "and then at the bottom, "equity injection of the guarantor" and it says, "the estimated equity injection was nearly $250 million or a three-year construction period," correct?
Correct.
Q nd "expected enhanced value due to CapEx," correct?
Yes.
Q nd that second sentence says, " s noted, DJT has invested nearly 250 million on capitol improvements since 2012 and the result has been an increase in collateral value to $366 million," correct?
Yes.
Q nd this again proved correct the 2011 credit memo that said that the asset value of the collateral was expected to increase based on the investment by the guarantor, correct?
Yes.
MR. SU REZ: Your Honor, I'm ready to move to a new exhibit. I can start that exhibit or we can take the break.

THE COURT: Let's start.
MR. SU REZ: Okay.
Q Let's take Plaintiff's Exhibit 300. This is the 2016 credit report, correct, Mr. Haigh?
Yes.
Q nd again, it reviews the loans to Trump Endeavor 12, L.L.C., 401 North Wabash Venture, L.L.C. and Trump Old Post Office, L.L.C., correct?
Yes.
Q nd it does not note that there are any missed payments, correct?
Correct.
Q Stated differently, the report indicates that there are no missed payments, correct?
Yes.
Q nd there are no late payments indicated in the report either, correct?
Right.
Q nd in fact, the three loans at this point are performing loans, correct?
Yes.
Q gain, in the lower section of the page, we see an increase to the market value of the Doral property to $382 million, correct?
Yes.

Q nd here, it says, "LW hospitality advisors appraisal dated March 25, 2016 ordered and reviewed by CRM RE D, Phil Ribolow," correct?
That's correct.
Q That would be Deutsche Bank Credit Risk Management?
That's the new name, what was previously called the Valuation Services Group.
Q So Valuation Services Group is now operating as CRM RE D?
That's correct.
Q nd with respect to the Trump International Hotel & Tower Chicago, 401 North Wabash, the market value is identified as 133 million which is a value consistent as per guidance from CRM -- how do you pronounce that acronym, RE D?
Just as good as any.
Q From the new Deutsche Bank Valuation Services Group, Phil Ribolow as of July 2016, correct?
That's correct. I think it stands for real estate advisory something, but I don't remember what the D stood for.
Q Understood. That marks the value at 3 -- loan to value at 34 percent?
Correct.
Q With a loan value of 45 million, correct?
THE COURT: Maybe the "D" stands for department. Is that possible?

THE WITNESS: Beg your pardon?
THE COURT: Maybe "D" stands for department.
THE WITNESS: Sounds way too obvious for Deutsche Bank's acronyms.
Q Then if we turn to page two, with respect to the Old Post Office building and annex in the description of the collateral, the last sentence states, " dditional commentary can be referenced in the recently completed appraisal, but the general conclusion is that the hotel will become the most elite hospitality establishment in Washington, D.C. once stabilized. Members of the lending and banking team have visited the property twice over the last 12 months," correct?
Correct.
Q Those would be the lending and banking teams of the Deutsche Bank management group?
Yes.
Q nd they are the individuals that would have prepared this document which you approved, correct?
That's right.
Q nd in 2016, the basis for recommendation of the annual report again reflects that construction -- on page three, "That construction/redevelopment of the Doral Resort in Florida has been completed with a substantial increase in property value, $382 million corroborated by a bank ordered appraisal dated March 2016 resulting in a 32.7 percent LTV", correct?

Yes.
Q nd then the last paragraph states that the relationship has been reviewed and supported from a management board perspective in connection with the guarantor's candidacy for president of the United States. Do you see that?
I do.
Q Who is the management board?
I'm not exactly sure who was on it. It says senior -- Deutsche Bank had a management board of executives who took care of very high level decisions.
Q Suffice it to say that the relationship with President Trump and companies associated with him was reviewed at the highest levels of management of Deutsche Bank Trust Company?
Yes, because Mr. Trump was at the time a candidate for the presidency, it had been escalated to a fairly senior level.
Q Okay. nd moving on to page seven of this document, you have the basis for approval of the annual review for the three facilities. nd again, I just want to confirm as we did in prior years that the financial profile of the guarantor on an adjusted basis means the DB adjusted values for the guarantor's net worth of 2.8 million?
Yes.
Q That checkmark, that's your handwriting, Mr. Haigh?
I think those checkmarks are more likely to be Mr. llegra's handwriting if he signed it.

Q But you would agree with me that the 2.8 billion of net worth is the Deutsche Bank adjusted value as reflected on page 15 of this document for the year ending June 30, 2015?
Yes.
MR. W LL CE: The objection was because he had already answered the question about the 2.8 billion.
THE COURT: Well, it doesn't really matter if I sustain it because he already answered it.
MR. W LL CE: Events overtook my objection.
MR. SU REZ: I'm trying to move along.
THE COURT: Well, after the break. We are coming back at a quarter to 12:00.
(Witness exits the witness stand.)
(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
THE COURT: Ever noticed how I bound up to the steps to the bench here? ny history of this trial should include that. Bounds up the steps. Okay. Let's continue. We have a new system. The witness is going to be quicker than previously.
Right, Officer? Right there.
THE COURT OFFICER: Fast, not faster.
THE COURT: Everything in life is relative.
THE COURT OFFICER: Witness entering.

THE COURT: Just like I said.
(Witness resumes the stand.)
THE COURT: Okay. Let's continue.
Q Mr. Haigh, picking up on where we left off, the basis for recommendation in the 2016 credit report again reflects the operating experience of the guarantor; in this case, President Trump? Well, not yet President Trump, but Mr. Trump, "Extensive experience in operating private golf and country clubs."
gain, it reflects that the overall equity position in various commercial real estate interests was adjusted to 2.195 on an adjusted basis. That's a DB's adjustment to the commercial real estate interest, correct?
Yes, that 2.195 million number is the DB adjusted one.
Q nd then again, we can see in page 15 of the credit report the various adjustments that are made to the guarantor's holdings, correct?
Yes.
Q nd in page 16, we see that the Valuation Services Group, which is still referred to as DBVSG here, also provided input into the trophy properties, correct?
Yes.
Q nd page 18, we can see that the key ratios again are computed based on the DB adjusted balances to both the balance sheet and the net cash flow, correct?
Yes, I believe so.

Q That is what the credit report reflects, correct?
Yes.
Q Turning to PX 3137, we have here the 2017 credit report, correct?
Correct.
Q nd by July 20, 2017, the guarantor Donald J. Trump is the president of the United States, correct?
That's right.
Q nd this credit report reflects that with respect to all three loan facilities, Doral, Chicago and the Old Post Office in Washington, D.C., the loans are performing, correct?
That's correct.
Q The credit report does not note missed payments, correct?
Doesn't note any missed payments that I'm aware of.
Q nd it doesn't note any late payments?
Similarly, I don't see any reference to late payments.
Q nd with respect to the bank's collateral on page two for the Trump Old Post Office, the credit report states, "That additional commentary can be referenced in the appraisal, but the general conclusion is that the hotel, now operational for a few months, has already become one of the most elite hospitality establishments in Washington, D.C., correct?
That's what it states, yes.
Q nd at this point, we see that the hotel is also open

for business, correct?
Yes.
Q nd that the loan has performed how the bank anticipated it to, correct?
That's correct.
Q In page eight, we see again, "The financial strength of the guarantor reflecting a stated net worth of 5.7 billion which is well above the net worth requirement even on an adjusted basis," correct?
Yes.
Q nd that reference to adjusted basis is the reference that Deutsche Bank's adjusted basis of the guarantor's net worth, correct?
Yes, it is.
Q nd moving on to page nine, we again see that "The relationship continues to be monitored at the highest levels of senior management within the firm and any issues arising from the guarantor's status as president of the United States are immediately addressed, taken to the appropriate reputational risk committee and discussed with appropriate legal counsel." Do you see that?
I see that.
Q Would you agree with me that the relationship with now President Trump and the three loan transactions associated with him are being monitored by the bank at their highest levels?

Certainly the highest levels of senior management were aware of the facilities in general terms. Monitoring in the sense of specifically monitoring the terms of this loan agreement, that did not happen. That continued to be managed by private wealth management.

Q That continued -- and you continued to be the head of credit risk management at private wealth management?

In the mericas, yes.

Q In the mericas?

Yes.

Q nd that was the group that was responsible for those three loan transactions, correct?

Yes.

Q nd the commentary here in the credit report that you signed, I believe, was all positive, correct?

Sorry. I didn't hear.

Q The commentary was positive?

Positive? Yes.

Q nd you would agree with me that again in page 12, the trophy properties reflect the bank's own analysis including with input with what is still referred to as the Deutsche Bank Valuation Services Group as to those specific asset values, correct?

That's correct. I'm not sure as of which date they consulted with that group, but that's what it says.

Q nd the key ratios that are applied to test the loans are again on page 14. Those key ratios are again --

Sorry. Can you highlight which --

Q Sure. See where it says "key ratios"?

Yes.

Q They are again utilized using Deutsche Bank's adjusted balances as to both the balance sheet and the net cash flow, correct?

That's correct.

Q Deutsche Bank used its own numbers to perform the key ratio analysis?

Yes, Deutsche Bank used its adjusted numbers to perform -- calculate those ratios.

Q nd moving on to Plaintiff's Exhibit 302, this was the last year that you participated in the credit review of the -- three Trump-related loans, correct?

That's correct.

Q The relationship now with President Trump?

Correct.

Q Moving on to the Old Post Office facility on page two again, we see at the top that, "The LTV has come down based on a January 1, 2017 appraisal that was ordered and reviewed and approved by CRM RE D Phil Ribolow," correct?

Yes.

Q nd we again see in the basis for recommendation on

page three that, "The financial profile of the guarantor includes a stated net worth of 5.58 billion which well in excess of the 2.5 billion minimum requirement even on an adjusted basis," correct?

That's correct.

Q nd that adjusted basis is the DB adjusted value, correct?

That's right, so using a DB adjusted value for the assets, the net worth still exceeded 2.5 billion.

Q nd in the third bullet point with respect to the DB's relationship, DB relationship, it says, "WM has had a long and satisfactory relationship," correct?

Yes, it does.

Q nd in part, that's because as of July 20, 2108, the three loans were still performing, correct?

Yes.

Q There were no missed payments noted on the credit report, correct?

None that I'm aware are captured in the credit report.

Q There were no late payments identified in the credit report, correct?

None that I'm aware of, yeah.

Q nd again, as we move through to page ten of the report, we see the valuations for the four trophy properties have been adjusted by Deutsche Bank in consultation with the

DBVSG, correct?

That's what it states.

Q gain on page 12, we see that, "The key ratios applied by Deutsche Bank to the guarantee are applied using Deutsche Bank's own adjusted balances to both the guarantor's balance sheet and net cash flow," correct?

That's correct.

MR. SU REZ: I have no further questions on cross for this witness.

THE COURT: Mr. Robert, would you like to go next?

MR. ROBERT: I will, and I will be exceedingly brief.

May I proceed, sir.

THE COURT: You may proceed.

CROSS-EX MIN TION.

BY MR. ROBERT:

Q Good afternoon, Mr. Haigh. I know you are a very precise man. That's why I checked. We are two minutes into the afternoon. I just have a few questions for you this afternoon.

The first one is something that is very important to my client Donald Trump, Jr., so I want to bring it to your attention.

MR. ROBERT: If we could pull up Plaintiff's Exhibit 290, which is the 2013 credit report.

Q Mr. Haigh you remember being asked some questions about

this earlier today, correct, sir?
Yes.
Q If I could draw your attention, and if we could scroll down to the assets under management portion, and if you could blow that up a little, please.
You see where it says, Donald J. Trump has 29.7 MM cash deposits?
Yes.
Q That means 29.7 million, correct?
That's correct.
Q nd for Donald Trump, Jr., that's 500,000, not 500 million, right, because if it's 500 million, it is going to be a very uncomfortable conversation with his dad tonight. So it is 500,000,000, right?
The "M" represents thousand, so it is 500,000.
Q In terms of -- and I don't want to waist anyone's time -- Mr. Suarez was talking to you this morning about parties to the loan transaction. Do you remember that?
Yes.
Q He was showing you the documents which were these credit reports and you very precisely and correctly said, "I can only speak now as to what's contained in the credit report." Do you remember that, sir?
Yes.
Q So would you agree with me that it is a fair statement

that the parties to the loan transaction are the ones actually identified in the loan transactions?
In the loan documentation?
Q In the loan documentation itself.
Yes.
Q Okay. Yesterday, you remember that Mr. Wallace had shown you the Statement of Financial Condition from 2011. Do you remember that?
Yes.
Q nd your testimony was in essence that in very general terms you looked at it. Do you remember that?
Yes.
Q nd you had said that you and your team had looked at it as well. Do you remember that as well?
Yes.
Q nd Mr. Wallace showed a portion of one paragraph. I just want to show you the second part of that paragraph that Mr. Wallace didn't show you.
MR. ROBERT: Nate, if we can call up PX 330, please.
Q nd rather than hand it to you, Mr. Haigh, I think it will just be easier if we go from the screen with Your Honor's permission.
THE COURT: Fine with me.
Q If we could turn to page four. Or actually, it says page 9 of 42. It is page four of the Statement of Financial

Condition.
MR. ROBERT: nd if you can enlarge the second full paragraph, please, Nate.
Q Yesterday when Mr. Wallace was questioning you, Mr. Haigh, he took you up to the line where it says, "outside professionals." Do you see that, sir?
Yes.
Q Would you, please, read into the record what the rest of that paragraph says on page four of the Statement of Financial Condition?
MR. W LL CE: Objection. These aren't his words. I don't know why the witness would read it into the record as opposed to counsel.
MR. ROBERT: Okay. No problem. Withdrawn. I will do it the easier way.
THE COURT: Withdrawn.
Q So when you and your staff were reviewing it, the language was "Considerable judgment is necessary to interpret the market data and develop the related estimates of current value. ccordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts." Do you see that, Mr. Haigh?

I do.
Q nd that's the language that's contained in the 2011 Statement of Financial Condition that you spoke of yesterday that you reviewed in general terms correct, sir?
Correct.
Q Okay. Throughout the course of the testimony over the last day and-a-half and even in response to Your Honor's questions, we can agree, sir, that under the loans with Deutsche Bank, every obligation under the loans was met, correct, as far as you know?
MR. W LL CE: Objection.
THE COURT: Well, it is as far as he knows.
MR. ROBERT: s far as he knows. The witness was very careful to say it was only based on his knowledge and I don't want him to go beyond that. It is what Mr. Haigh knows as the chief risk officer at the bank at the time.
THE COURT: So overruled.
So far as I recall, the loans were performing.
Q nd all the expectations that were required of the borrower were met, as far as you know?
So far as I know, yes.
Q Okay. nd we've already spoken -- Your Honor was clear about it. I'm going to be very brief. There were no late payments that you are aware of, correct?
I'm not aware of any late payments.

Q You were not aware of any missed payments, correct?
I'm not aware of any missed payments.
Q nd as a matter of fact, on two of the three loans, during the time you were at Deutsche Bank, the guarantees were either reduced or eliminated, correct?
That's -- that's right.
Q nd you had testified yesterday that the purpose of your department or the credit exercise is to make sure that the bank gets paid, correct?
That's one of the purposes of my group.
Q One of the more important reasons that you have a group such as yours, correct, sir?
I guess I'd agree with that.
Q Okay. nd would you agree with me that you and your team conducted a thorough analysis of these loans, correct, sir?
I think we conducted an appropriate analysis of those loans, yes.
Q nd it was a thorough analysis? I mean, you take pride in your work. You had the position you achieved at the bank. I think you can agree with me that it was a thorough analysis. I mean, we see the depth and I'm not going to go through all the credit memos, but we see the depth of these memos that you signed off on, correct, sir?
Yes.
Q nd as a matter of fact, in your testimony, it was

yesterday morning, you said you were the final line for most of these that you -- it needed your approval for this to go through, correct, sir?
Yes.
Q nd as a result, you and your team conducted a thorough analysis, fair?
MR. W LL CE: Objection. I think he asked and answered that.
THE COURT: I'm not sure it is about the exact same --
MR. ROBERT: I'll rephrase it.
Q You and your team did a good job didn't you?
Based on the information we had at the time, I think we did a reasonably thorough analysis of the information.
Q Well, you did a good job in that your goal of making sure the bank was repaid was achieved, correct?
MR. W LL CE: Objection.
MR. KISE: What's the objection?
THE COURT: What's the objection?
MR. KISE: You don't like the question?
MR. W LL CE: I don't know that he knows -- he left the bank in 2018. The loans were outstanding. I don't know that he has a foundation to answer the question the way that Mr. Robert asked it.
MR. KISE: He's only asking about 2011 to 2017 when

he was not --
MR. W LL CE: That was not the nature of the question.
MR. ROBERT: If I could have the question read back and I will modify it.
THE COURT: Please read back.
MR. ROBERT: Thank you.
(Whereupon, the requested portion of the record was read back.)
(Continued on the next page.)

Q Through 2018, which is when you left the bank; correct, sir?
MR. W LL CE: I'll just note an objection that I believe the loans were being paid on interest, so I don't know the bank repaid its principles.
MR. ROBERT: I don't appreciate you putting words in the witness's mouth. The witness can answer the question.
THE COURT: Overruled. Please answer the question.
So to the extent that we had been repaid with some partial paydowns, yes the bank got repaid on those elements.
Q nd up until the time you left in 2018, Deutsche Bank received millions of dollars in interest; correct?
I presume so.
Q nd at the end of the day, you and your team made a good credit decision by these loans being made in this case; correct?
That's a more subjective question.
Q Well, sir, when you were there you were in charge of risk; correct? From 2011 to 2018; correct?
Yes.
Q nd it was your final approval that allowed these loans to go into existence; correct?
That's correct.
Q nd the fact that when you left in 2018 and these loans

were performing is a credit to the fact that you and your team made a good credit decision; correct?
I think based on the information.
Q Yes or no sir, please?
THE COURT: Well, you know I favor yes-or-no answers to yes-or-no questions, but if he needs to explain it, he can explain it, if you need to.
MR. KISE: That's certainly not the standard that applied to other witnesses, Your Honor. The other day you insisted that other witnesses responded to the government's questions with yes-or-no answers. That was a yes-or-no question. nd respectfully, Your Honor, I think it's a different standard.
THE COURT: I respectfully disagree that I'm applying a different standard. Look, I've been doing this job for 20 years now. If a question can be answered yes or no without an explanation, then do that, but sometimes an explanation is necessary, but we understand each other.
Q Do you want the question read back with the Court's permission?
THE COURT: Please read back.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
I will agree with that.
Q You did a good job; right?

MR. ROBERT: That's a yes or no, Your Honor.
I'd say yes to that.
Q Very good.
MR. ROBERT: Thank you, Your Honor. I have no further questions.
THE COURT: Thank you.
nd any redirect by the plaintiff?
MR. W LL CE: Mr. Haigh, I'll try to be brief.
REDIRECT EX MIN TION
BY MR. W LL CE:
Q Is whether or not a loan gets repaid the same question as whether or not the bank has accurately rated the risk in a loan?
No.
Q What is the difference?
So getting repaid is just one element of what the bank's trying to achieve. The risk rating goes to assessing the risk and from that we set aside capital to reserve it against the loan -- potential loan losses and the amount of capital that we set aside is driven by the risk rating and by the collateral. nd in order to get a fair return on our capital, in other words, charge the right interest rate, we have to have the correct risk rating. So just getting repaid on the principal doesn't address at all whether we got properly recompensed for the risk we were taking.

Q nd you were asked by Mr. Robert if you had done a good job. I take your answer is you did a good job with the information you had?
Correct.
Q You have no way of knowing whether there was information that wasn't provided to you that might have been relevant to your analysis; is that correct?
That's correct.
MR. W LL CE: No further questions, Your Honor.
THE COURT: ny recross?
MR. ROBERT: No, Your Honor. Your Honor, thank you.
THE COURT: Okay. The witness is excused everybody; right? Okay.
THE COURT OFFICER: The audience remain seated, please.
(Whereupon, the witness is excused from the witness stand.)
THE COURT: Do we need to discuss anything, resolve any issues before Mr. Weisselberg returns?
MR. W LL CE: Not that I'm aware of.
MR. ROBERT: We wanted to talk scheduling for a second.
(Whereupon, an off-the-record discussion is held between Counsel.)

THE COURT: Mr. Solomon, are you continuing the direct examination of Mr. Weisselberg?
MR. SOLOMON: I am, Your Honor.
THE COURT: Okay. Let's get Mr. Weisselberg up here.
CONTINUED DIRECT EX MIN TION
BY MR. SOLOMON:
Q Good afternoon, Mr. Weisselberg.
Good afternoon.
Q May I ask to have Exhibit PX 1386 put back in front of you?
THE COURT: nd I'll remind the witness, as I always do, that he's still under oath.
CONTINUED DIRECT EX MIN TION
BY MR. SOLOMON:
Q Do you have that in front of you, sir?
I do.
Q Do you recall or recognize this as comprising the certifications for various loans that we talked about on Tuesday?
Yes.
Q Okay.
MR. SOLOMON: Your Honor, we move the family of documents in evidence as PX 1386.
THE COURT: Granted. They're in evidence.

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(Whereupon, the items previously referred to are received and marked Plaintiff's Exhibit Number PX 1386 in evidence.)

Q I'd like to mark for identification PX 1157.

Sir, PX 1157 for identification is an e-mail from Patrick Birney to Donna Kidder with a copy to you dated February 1, 2016. Do you see that, sir?

I do.

Q Do you recognize it?

Yes.

Q What do you recognize it to be?

Just an e-mail from Patrick Birney to Donna Kidder regarding a corporate cash flow that he was going to put into a -- I assume the word "shell" means pro forma, without numbers.

Q Okay.

MR. SOLOMON: The People move PX 1157 into evidence.

MR. ROBERT: Objection. Statute of limitations and as to the prior submission by Mr. Solomon because it was so thick to the extent any of those have a statute of limitations objection, we just raise those with the Court. Thank you.

THE COURT: Understood. Overruled. They're in evidence, both.

Q Sir, does this cover e-mail indicate that there is an

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Excel spreadsheet attached?

I see the word "attachments" where it says "Trump Organization cash flow" -- "corporate cash flow."

Q Yes. Do you recognize at the end the .xlsx to refer to an Excel spreadsheet?

Is that what that means?

Q I'm asking if you know, sir.

I don't know what it means, no. I'm sorry.

Q That's fine.

Could we please have 1157 native put up?

You mentioned the corporate cash flow spreadsheet. Do you see it up on the screen?

Yes.

Q Is that what you were referring to in your prior answer, sir?

Yes.

Q You see there is a column for "business segment" at the top? He'll highlight it for you. Top left?

MR. SOLOMON: Your Honor, may I approach the screen and point it to the witness?

Yes, I see it.

Q Thank you.

nd what do you understand "business segment" to refer to there?

I would imagine that's the type of business that falls

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under a category.

Q nd could we look at lines 23 and 24, please? Do you see that?

I do.

Q Those two lines, the first 23 references "1290 venue of the mericas" with a "(b)?"

Yes.

Q nd the next line 24, "555 California Street" with a "(b)." Do you see that?

Yes.

Q Those are the two properties that were owned by the partnership between the Trump Organization and Vornado; correct?

Correct.

Q Can we scroll down, please, to Note B?

nd I will read into the record "Note B: lthough there could be operating profits, distributions are at the discretion of Vornado." Do you see that, sir?

I do.

Q Did you direct Mr. Birney to add Note B to the spreadsheet or shell?

I don't remember doing that. I think Mr. Birney knew the parameters of the Vornado Partnership regarding distributions.

THE COURT: Does anyone know is it Vornado or Vornado? nybody work for them or something? Invest money

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in them?

MR. SOLOMON: Your Honor, I'm going with Vornado.

THE COURT: We're all on the same page.

MR. SOLOMON: ll right. May I ask for a read back of the witness's last answer?

THE COURT: Please.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

Q What is the basis, sir, for that answer that you believe Mr. Birney knew the parameters?

Mr. Birney had been working on this -- on our financial statements I believe at that point. I don't know when he arrived at the company. Maybe he wasn't, but the limited partnership calls for being given distributions only when Vornado distributes money as a whole. In other words, if they don't distribute money themselves, we don't receive anything. If they receive a dollar, we get $0.30 based upon the 30 percent. I don't know if Mr. Birney knew that because I told him to do that or whether or not he knew it from some other source.

Q Okay. ctually, sir, not to quibble, but numbers are quite important in this case.

If they got a dollar, you got $0.30? Isn't it actually if they got $0.70, you got $0.30?

Yes -- well, out of the dollar we should have gotten

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$0.30. Out of the dollar --
Q Out of the dollar, but out of that dollar they got --
$0.30, yes.
Q But as you sit here today, you do not know how Mr. Birney came to learn that distribution -- excuse me -- operating profits, distributions are at the discretion of Vornado?
I don't remember. I don't remember.
MR. SOLOMON: ll right. Can we mark PX -- I'm sorry. Can we move into evidence the native version of PX 1157?
MR. ROBERT: Statute of limitations objection, Your Honor.
THE COURT: Overruled. It's in evidence.
MR. SOLOMON: Okay.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number PX 1157 in evidence.)
MR. SOLOMON: Can we please mark PX 1293 for identification?
Q Sir, is PX 1293 for identification another e-mail from Patrick Birney to you this time with a cc to Mr. McConney?
Yes.
Q Dated February 25, 2016?
Yes.

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MR. SOLOMON: The People offer it into evidence.
MR. ROBERT: Statute of limitations objection.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number PX 1293 in evidence.)
Q Do you recognize this e-mail, sir?
Yes.
Q What do you recognize it to be?
Patrick Birney telling me that he put three copies for the kids in their folders on my chair. "You and Jeff have copies on your desks and I'll call you tomorrow." So it was an e-mail that he put together, some information of which he wanted each one of the kids to receive, as well as myself and Jeff.
Q Let's take that one step at a time.
What information did you understand that he was attempting to convey to you there?
I don't remember whether or not -- whether that was -- the timing of it is what's throwing me off. Is it a shell or was it a shell or with numbers already in it, I don't remember. Do you have something to show me that would help me?
Q We will, actually. I just want to understand what your recollection is before seeing this document, sir.
When you refer to you "the kids," is that the adult children of Donald Trump?

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Correct.
Q That would be Donald Trump, Jr.?
Correct.
Q Eric Trump?
Correct.
Q nd Ivanka Trump?
Correct.
MR. SOLOMON: Could we please mark PX 1293 native for identification?
Q Sir, looking at the document on the screen entitled "Corporate Operating Financial Summary 2015," does that refresh your recollection as to what was attached to the cover e-mail we were just talking about?
Yes. That's what I thought was in there, yes.
Q So is this the shell you were referring to?
No, this is not a shell. shell would have no numbers on it. It's what you showed me initially. This is no longer a shell. This is now numbers being put into that shell.
Q nd that is based on the performance of the various entities under the Trump Organization umbrella; correct?
I don't know all the sources how Mr. Birney got all his numbers together. I assume it's a combination of things.
Q Was that your -- was that your understanding of what it was intended to show?
Yes. The -- I have a question, if you don't mind.

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Was this a historical -- I'm sorry.
THE COURT: Well, I often tell witnesses you're there to answer questions, not ask them, but.
THE WITNESS: I understand.
THE COURT: If Mr. Solomon --
I want to help you, give you a correct answer.
Q Mr. Weisselberg, I will take all the assistance you're willing to offer.
THE COURT: I think he said he has a question.
No. Was this given historically or prospectively, this statement? I don't know the dates.
MR. SOLOMON: Scroll down.
Q Does it help you to look at the totals of the bottom line to see if those were historical results or projected future results?
No.
Q Maybe I can do this another way. Look at the cover e-mail for a moment, please. It should be in front of you. Oh, did we take that back?
Yes.
Q PX 1293.
Based upon the date of 2/25/16, I would -- thank you.
Q Please. Does that -- does that assist you, sir?
That would make it historical.
Q Historical.

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nd in fact, if you look at the subject, "Financial Summary, Corporate Operating Financial Summary" and the next line, the attachment is the financial summary for 2015?
Now -- yes.
Q So --
To answer your question, it's historical.
Q Thank you.
You're welcome.
MR. KISE: Your Honor, real quickly. This realtime has stopped. It stopped realtiming. I'm not sure why. It's going but it's not scrolling.
(Whereupon, there is a pause in the proceedings.)
Q Did Mr. Birney undertake on his own to put together this Operating Financial Summary for 2015?
When you say did he undertake himself, meaning just out of the clear blue sky decided one day to do that or was he directed to do it? Is that the question?
Q Was he directed to do it to your knowledge?
I believe somebody asked him to put together some information. I don't recall who specifically asked for that information, but I believe he was asked to do it.
Q Was there a point in time that any of the three adult children asked for that information?
I don't remember who it was specifically.
Q You don't recall yourself asking Mr. Birney to put

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together this information, do you?
It's a possibility one of the three children may have asked me to do it then I in turn may have asked Mr. Birney to do it. I just don't recall which child it was.
Q To your knowledge when all of the communications between or were from any of the three adult children, did Mr. Birney have to go through you?
Not necessarily.
Q They could have spoken to him directly?
They could have, yes.
Q Do you have any understanding as to why Mr. Birney was leaving a copy on Jeff's desk?
Just for information purposes to have in case somebody asked him a question.
Q Do you understand or did you understand at the time that the purpose of this creating and distributing the Trump Organization Operating Financial Summary 2015 to the adult children was an effort to keep them informed of the performance of the business?
That sounds about right. I would agree with that.
Q Were you at anytime either requested or directed to keep them advised of the information contained on that spreadsheet we just saw?
I don't believe I was -- it was more of a request to do this as opposed to a direction. Maybe they mean the same thing,

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I don't know.
Q My question is --
Yes, I don't want to mince words. It's a chance because they were just getting involved in running the business as Mr. Trump had now become president. They wanted to be knowledgeable about the running of the business.
So 2016, he was in the process of running for president and they wanted to get up to speed on how the business was operating.
Q Okay. The third page of PX 1293 after the slip page, which says "document provided natively."
Yes.
Q Let's take a look at that. It was produced to us I will tell you in this format.
Is this document part of the first two pages or is it a separate document, to your knowledge?
I don't remember. It's -- I don't remember if it was separate or part and parcel of the original package.
Q Okay. Do you recall in or about February of 2016 forwarding on this summary information to Donald J. Trump, Jr., Ivanka Trump and Eric Trump?
I imagine I did.
Q Yet you have no reason to doubt that this is what you did at that time?
Correct.

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Q Okay. Mr. Weisselberg, do you recall that we had some discussions at your prior session on Tuesday relating to a review at Trump Tower by the insurers?
review of the --
Q The insurers came to Trump Tower, sat, I believe -- tell me if I'm correct -- sat in a conference room and reviewed the Statements of Financial Condition. We talked about that?
Correct, correct.
Q Do you recall that?
I do recall.
Q m I correct, sir, that the Trump Organization declined to provide a copy to the insurers to take with them; correct?
I was only told to when I was given direction to meet with them. No one asked me to give it to them, take with them. So I just on my own decided here it is, you can read it, look at it. If they wanted a copy, I certainly would have had them sign an ND and probably given it to them if they asked. But year after year they were satisfied coming in, sitting there, taking their time for the entire day reviewing it.
Q To your knowledge did any of the insurers or sureties ever ask to take a copy of the financial statement with them?
Not that I can remember.
Q To your knowledge were the insurers or sureties required to sign a Non-Disclosure greement before being provided access to the then-current Statement of Financial

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Condition?
I don't remember.
Q Is it possible you just don't know one way or the other?
No, I don't know if our attorneys ever requested it. I don't know.
Q Okay. Now, sir, on Tuesday in asking you questions about this meeting with the insurance company, and I'm going to put that up on the screen, you were asked, starting on page 953 -- excuse me -- 953, line 24:
"QUESTION: Were you present for all the conversations Jeff and Patrick had with Ms. Markarian?
" NSWER: It was all purpose of the same meeting.
"QUESTION: So were you there when they described to her how the assets were valued?
" NSWER: Yes, I was at the meeting and they told her that they called Doug Larson and Larson provided a summary of comps for downtown Manhattan or midtown Manhattan and he would take those -- Jeff would take those comps or Patrick would, valuations and cap rates and so on and then he would do his computation, but to say that we --
"THE COURT: Finish, please.
" NSWER: To say that we got appraisals from them, that was -- I don't recall that conversation at all."
nd then there is a read back and an answer.

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Q Now, Mr. Weisselberg, do you recall sitting for your deposition in May of this year?
Yes.
Transcript continues on the following page....

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Q nd you came to our offices, correct?
Correct.
Q You were accompanied by counsel?
Yes.
Q That deposition was recorded by stenographic means?
Yes.
Q It was also recorded by video, correct?
I believe so, yes.
Q Mr. Weisselberg, I'm going to ask my colleague to play the video of certain particular questions and answers you gave on the same subject back then and that's beginning on the transcript page 224, line 22 through 225, line 19.
(Whereupon, the video was played.)
Q Sir, that was your testimony back in May, right?
Did I recall what exactly --
Q Sir, yes or no, that was your testimony back in May?
THE COURT: Yes or no.
Yes.
Q That was your testimony --
THE COURT: He said yes. You got to listen to his answer.
Q It is just coincidence that's exactly five months to the day, right? Today is October 12th.
Okay.
Q Let's talk about the Seven Springs payoff, shall we?

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Do you recall a time when --
Seven Springs loan payoff?
Q Yes.
Okay.
Q re you familiar with any discussions about a desire to pay off the Seven Springs loan before it came due?
I -- I do recall talking to Eric about paying off a number of loans that I felt we should pay off at that time. It wasn't just Seven Springs. There were other loans that we talked about as well.
THE COURT: Ten-minute warning.
MR. SOLOMON: Yes, Your Honor, thank you.
Q The conversations -- withdrawn.
Did you have conversations with Eric Trump in or about 2015 about paying off the Seven Springs loan?
It's certainly possible. I just don't remember exactly.
Q Do you recall telling Eric Trump that he should wait until after June 30th to pay off the loan, so the cash position on Mr. Trump's Statement of Financial Condition would not be decreased by the payoff amount?
That's certainly possible. That's certainly possible, yes.
MR. SOLOMON: Can we, please, mark PX 1112 for identification.

Q Sir, PX 1112 for identification has been put in front of you. Do you recognize it?
Yes.
Q What do you recognize it to be?
n e-mail to Eric Trump suggesting to him that if we are going to pay off the loan, to do it subject post June 30th.
Q In order to keep his cash balance as high as possible, right?
Right.
MR. SOLOMON: The People offer PX 1112 in evidence.
MR. ROBERT: Statute of limitations objection.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1112.)
Q In each year, the efforts to start preparing the Statement of Financial Condition occurred after June 30th; is that right?
Correct.
Q So here, we have a situation back in pril even before the people in the Trump Organization are starting any work on the Statement of Financial Condition for that year where you're trying to accommodate the cash balance position for the statement that's coming up, right?
Correct.
Q Mr. Weisselberg, I would like to talk to you about the

crimes to which you pled guilty on ugust 18, 2022. Do you recall you were charged with 15 separate counts?
Yes.
Q Including several counts of falsification of business records?
Whatever is in my -- I forgot the name of the legal document.
Q Okay. nd you pled guilty under oath to all 15 counts, correct?
I did.
Q nd you were required to pay back taxes penalties and interest in the amount of $1.9 million; is that correct?
That sounds about right.
Q nd with interest and other costs, it came out to be about $2 million. Do you recall that?
Sounds about right.
Q nd you were incarcerated as a result of that guilty plea?
Sorry?
Q You were incarcerated as a result of that guilty plea, correct?
I was.
Q Now, after pleading guilty to all of these crimes, the years long scheme of talks fraud you and the Trump Organization entered into that separation agreement that we discussed on

Tuesday, right?
Correct.
Q What did you have to agree to do or not to do in exchange for the severance package?
If you have the document.
Q Let's pull it up.
MR. SOLOMON: Please pull up PX 01751 already in evidence. Paragraph three, subsection "D" as in dog. Can we go to the top just for the introduction, please.
Q It starts with "employee promises, in exchange for the benefits provided in paragraph two, employee promises." Do you see that, sir?
Yes.
Q nd paragraph D, "That except for acts or testimony directly compelled by subpoena or other lawful process issued by a court of competent jurisdiction, he will not one, communicate with, provide information to, or otherwise cooperate in any way with any other person or entity" and then that goes on. Do you see that?
Yes, I see that.
Q Sir, did you understand that this subsection precluded you from voluntarily cooperating with anyone adverse to the Trump Organization including the ttorney General's office?
I -- I didn't give it a lot of thought to be honest.
Q But you agreed to it?

I agreed -- if it was -- if I was ordered to meet with a court or some lawful person or a subpoena, then I would meet with them, yes.
Q You would not voluntarily cooperate, right?
That's what it says, yes.
Q Now, sir, let's be clear. This is a yes-or-no question. There is no misunderstanding. Is it just a coincidence that under this severance agreement, that you are being paid $2 million which is almost the same exact amount that you had to pay in connection with your guilty plea?
Coincidence.
Q Pure coincidence?
Coincidence.
MR. SOLOMON: We have nothing further at this time, Your Honor. Excuse me one moment.
I apologize, Your Honor. We are not complete. May I have a moment?
THE COURT: Sure.
(Whereupon, there was a pause in the proceedings.)
MR. SOLOMON: I apologize for the confusion. We might have more after lunch. We would like to take a few minutes. I think you gave me the warning. We have two minutes. If we could break for lunch and we will let the defendants know if we need Mr. Weisselberg to come back or not.

THE COURT: Okay. I just want to point out not to be such a stickler, but one of the documents that Mr. Robert objected to on statute of limitations grounds was dated February 24th or so, 2016. That's after statute of limitations period.

MR. ROBERT: Understood, but it had to do with information that was from '15. That's what we talked about last week and it is part of the Statement of Financial Condition. I understand what Your Honor is saying, but that's why we preserved the objection.

THE COURT: I see. Okay. Understood. ll right. So let's break for lunch.

MR. SOLOMON: I apologize for the confusion.

THE COURT: We come back at the usual 2:15, right?

MR. SOLOMON: Yes.

(Witness exits the stand.)

(Whereupon, a luncheon recess was taken.)

F T E R N O O N S E S S I O N

* * * * *

THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, please be seated

and come to order.

THE COURT: I understand there is a request for a front bar. It may eventually have to be made public, but for right now, it is okay.

(Whereupon, an off-the-record sidebar discussion was held.)

THE COURT: I think we have an agreement. The plaintiff will not be questioning Mr. Weisselberg anymore at this particular time. You reserve the right to recall him later. The defendants have the right to call him. nd I'm instructing him -- I'm lifting the prohibition on discussing the case with counsel or with anyone else. nd is there more to it than that at this point.

MR. W LL CE: Nothing from the plaintiff, Your Honor.

MR. ROBERT: Nothing from defendants, Your Honor. Thank you.

THE COURT: Let's move on to the next witness.

MR. H REN: Good afternoon, Your Honor. Eric Haren on behalf of the People. The People call Patrick Birney.

THE COURT OFFICER: Witness entering.

P T R I C K B I R N E Y, a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE COURT OFFICER: State your full name and either

business or home address on the record.

THE WITNESS: Patrick Birney. 725 Fifth venue, New York, New York.

THE COURT: You have to be really close to the microphone. Speak right into it, slowly, loudly, clearly. nd let's start the examination.

MR. H REN: Thank you, Your Honor.

DIRECT EX MIN TION

BY MR. H REN:

Q Good afternoon, Mr. Birney, where are you currently employed?

Trump Organization.

Q nd how long have you worked at the Trump Organization?

Since 2015.

Q pproximately when in 2015 did you start working at the Trump Organization?

January 2015.

Q What was your title when you started with the Trump Organization?

Senior financial analyst.

Q Can you walk us through the titles you have held at the Trump Organization since you started there in 2015?

Yes.

Q Please do.

Senior financial analyst, associate assistant

vice-president financial operations, and currently vice president of financial operations.

Q Can you give us just the rough time periods of those positions?

Most recently, I was promoted in last year, at some point in 2022. I can't really give you specifically the other ones.

Q Okay. Did raises generally accompany promotions at the Trump Organization?

Yes.

Q Who informed you of your promotions at the Trump Organization?

llen Weisselberg and Ron Lieberman.

Q Let's talk about your background. Could you describe your educational background after high school?

Yes. I went to the University of Michigan. I got a degree in economics.

Q When did you graduate from the University of Michigan?

2013.

Q What did you do after you graduated from the University of Michigan in 2013?

I worked for a company called on.

Q What did you do for on?

on is an insurance brokerage and I worked on a sales and account management team.

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Q What did your role at on entail in general terms?
live claim management. I would deal with the brokers a lot, deal with the clients a lot, a lot of e-mails, schedules of insurance requested certificates, invoice management.
Q Have you ever held any professional licenses?
Yes.
Q Which licenses have you held?
I had an insurance broker's license back in 2014, I think.
Q Do you still have that license today?
I really don't know. I can't imagine that I do.
Q Okay. Do you hold any licenses as an appraiser?
No.
Q Do you hold a designation as a member in the ppraisal Institute?
No.
Q Do you hold any other licenses or associations relating to appraisers?
No.
Q Have you ever been a certified public accountant?
No.
Q During your tenure at on, did you work on Trump Organization insurance accounts?
Yes.
Q Can you describe your work on those accounts, please?

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Sure. Similar to the other clients that I managed, again, schedules of insurance, invoice management, certificates of insurance requests, auto I.D. cards, I was the -- I was one of the main contacts that if somebody from Trump needed something, they would reach out to me.
Q During your work at on or at the Trump Organization, did you ever come across the phrase "team of four"?
Yes.
Q What did you understand that phrase to refer to?
The team of four from the Trump Organization who worked on the insurance program.
Q Was it called "team of four" because there were four members of the team?
I believe so, yes.
Q Who were the four members of the team?
Ron Lieberman, llen Weisselberg, mat calendar Marie and Mike Cohen.
Q Thank you. You said that you joined the Trump Organization in January of 2015.
Who offered you a job at the Trump Organization?
llen Weisselberg and Ron Lieberman.
Q nd where did they offer you the job?
In llen Weisselberg's office.
Q Thank you. You said your title when you joined the Trump Organization was senior financial analyst.

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Can you describe generally your duties in that role?
I worked on a lot of projects. I worked -- worked on the insurance program. I did financial reporting for the golf clubs. I worked -- I did projects for llen Weisselberg. I did projects for Jeff McConney.
Q You said "I did financial reporting for the golf clubs." What did you mean by that?
Golf clubs would send monthly financials and yearly budgets to the corporate office. I would consolidate those and analyze those on a monthly and annual basis.
Q nd did the monthly financials include income and expense figures?
Yes.
Q nd can you tell us more about your work on the monthly golf course financial reporting?
Sure. There was an Excel -- Microsoft Excel document that would be updated every month, had all the clubs on the same spreadsheet. There would be a column for actual year-to-date. There would be a column for budget year-to-date, a column for last year year-to-date, and a column for annual budget, and I would update those figures in Microsoft Excel every month.
Q Did you have a practice of sharing the monthly golf course financial reporting information with anyone?
Yes.
Q With whom was it your practice to share that

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information?
I would share it with my direct boss Ron Lieberman first and then we would review it together and then I would share it with Larry Glick, llen Weisselberg, Ron Lieberman and Eric Trump.
Q Thank you.
During your time at the Trump Organization, who did you understand were your supervisors?
Ron Lieberman, and then I did work for a lot of other people above me. So Ron Lieberman would be my direct boss, but I would consider llen Weisselberg, Jeffrey McConney, Mat Calamari to be my superiors. Larry Glick, too.
Q nd is it fair to say that for matters that you worked on with Jeffrey McConney and llen Weisselberg, you viewed them as your superiors?
Yes.
MR. H REN: Let's mark for identification Plaintiff's Exhibit 1162, please.
Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
n e-mail from Jeff McConney to myself.
Q nd what is the date on the e-mail?
November 16, 2016.
Q nd what is the subject of the e-mail?

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DJT SOFC.
Q What did you understand that subject to refer to?
The Statement of Financial Condition for Donald J. Trump.
MR. H REN: I move Exhibit 1162 be moved in evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1162.)
Q Does the e-mail note that there is an attachment?
Yes.
Q What is the file name of the attachment?
1-Jeffsupportingdataxlsx.
Q Do you have an understanding of the term "Jeff supporting data"?
Yes.
Q What do you understand it to refer to?
The main backup spreadsheet that supported the numbers on the Statement of Financial Condition.
Q nd the word "Jeff," who does that refer to?
Jeff McConney.
MR. H REN: I would like to pull up on the screen a native file that is a component of Exhibit 1162.
Q Mr. Birney, it is the attachment to the e-mail that you were just looking at. Do you recognize this document?

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Yes.
Q What do you recognize it to be?
draft of the Statement of Financial Condition for the year June 30, 2016.
Q When you say, "draft of the Statement of Financial Condition," do you mean a draft of the supporting data for the Statement of Financial Condition?
Yes. Sorry.
Q Okay.
MR. H REN: I would like to move this native file into evidence?
THE COURT: Granted. It is in evidence.
Q What is indicated to you by the information in cell H1?
That things highlighted in yellow are open.
Q nd what do you understand the phrase "open items" to mean?
I understand it to be these items need to be updated or finalized.
Q So is it fair to say that an open item in the context of this spreadsheet is not an item that's been finalized?
That's fair to say.
MR. H REN: Okay. Let's pull up Plaintiff's Exhibit 1167, please.
Q Mr. Birney, do you recognize this document?
Yes.

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Q What do you recognize this document to be?
n e-mail from Jeff McConney to myself on November 16, 2016.
Q That's the same date as the prior e-mail, correct?
I believe so.
Q What is the subject of this e-mail?
2105 DJT Statement of Financial Condition.
MR. H REN: I would like to move this exhibit into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1167.)
Q What did you understand the subject of the e-mail to refer to?
The Statement of Financial Condition for Donald J. Trump for the year 2015.
Q Does the e-mail have an attachment?
Yes.
Q Do you see --
MR. H REN: Back to the e-mail, please.
Q Do you see the information at the bottom of the e-mail that states "scanemail@trumporg.com?" Do you see that?
Yes, sir.
Q What is the e-mail at the bottom of this message that begins "from scanemail@trumporg.com" indicate to you?

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It indicates that it was scanned in on the 26th floor copier machine by the pantry and then forwarded by Jeff to me.
Q Let's look at the attachment starting on page two of the exhibit. Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
The cover page to the 2015 Statement of Financial Condition for Donald J. Trump.
Q If you could just flip through the exhibit, you should see that on page 27 there's the rear page of Statement of Financial Condition. Do you see that?
Yes. If that's page 27, yes.
Q So if you could flip through from page 2 to page 27 and just confirm that the full Statement of Financial Condition for 2015 was forwarded to you on November 16, 2016?
It appears to be the full statement.
Q So, Mr. McConney sent you a supporting data for the Statement of Financial Condition and a copy of the 2015 Statement of Financial Condition on November 16, 2016; is that correct?
Yes.
Q Did you at some point in time become involved in the process of preparing Mr. Trump's Statement of Financial Condition?
Yes.

Q When was that?
Shortly after this e-mail.
Q So in or about November 2016?
Yes.
Q nd for which years had you been involved in the process of preparing Mr. Trump's Statement of Financial Condition?
From 2016 to 2021.
Q So each of the years in that range?
Yes.
Q Did you understand that working on Mr. Trump's Statements of Financial Condition was part of your job at the Trump Organization?
Yes.
Q What did you understand the Statements of Financial Condition for the years that you worked on them to show?
Mr. Trump's net worth.
Q nd is that as of a particular date?
s of June 30th of each year.
Q Do you have an understanding of the phrase "back up" in the context of Mr. Trump's Statements of Financial Condition?
Yes.
Q What do you understand that phrase to refer to?
The backup to the supporting data spreadsheet. So anything that was used to -- wherever the numbers came from, I

would usually refer to that as the backup.
Q Let me see if I understand correctly. Supporting data spreadsheet contains number and the backup is additional information supporting those numbers. Is that fair?
Yes.
MR. H REN: Let's mark for identification Plaintiff's Exhibit 756. Excuse me. This one is in evidence already.
Q Mr. Birney, the document on the screen, Plaintiff's Exhibit 756, is in evidence as Statement of Financial Condition for Donald J. Trump as of June 30, 2016. I just want to direct you to page two. Do you see at the bottom of the independent accountant's compilation report on this page that there is a date?
Yes.
Q nd do you see that the date is March 10, 2017?
Yes.
Q nd that date is after you began working on Mr. Trump's Statement of Financial Condition in November of 2016?
Yes.
Q So is the Statement of Financial Condition for the year ending June 30, 2016 the first statement of Statement of Financial Condition that you worked on for Mr. Trump?
Yes, I think so.
(Continued on the next page.)

Q Did somebody assign you to work on Mr. Trump's annual Statement of Financial Condition in November 2016?
Yes.
Q Who assigned you to work on that project?
I don't know who -- I don't know who assigned me. It was either Jeff McConney or llen Weisselberg.
Q Do you have, you know, any indication of which of those people is a more probable answer?
Probably Jeff McConney.
Q With respect to preparing Mr. Trump's Statement of Financial Condition, did you ever receive any training documents in writing?
For the preparation of the Statement of Financial Condition?
Q Yes.
I don't believe there are any official training documents in writing.
Q nd speaking generally are you aware that asset evaluations in the Supporting Data for Mr. Trump's Statement of Financial Condition are something called cap rates?
Yes.
Q Before working on Mr. Trump's Statement of Financial Condition had you ever valued a property using a cap rate?
I don't think so.
Q When did you complete your work on the 2021 Statement

of Financial Condition for Donald J. Trump?
In late 2021.
Q Let's --
I think.
Q So prior to the completion of your work on the 2021 Statement of Financial Condition, had you had any professional training in applying accounting principles generally accepted in the United States of merica also known as G P?
I don't think so.
Q Prior to the completion of your work on the 2021 Statement of Financial Condition, did you know what the Financial ccounting Standards Board was?
I don't think so.
Q Prior to the completion of your work on the 2021 Statement of Financial Condition, did you understand the phrase "accounting standards codification?"
No.
Q Prior to the completion of your work on the 2021 Statement of Financial Condition, were you familiar with ccounting Standards Codification 274 governing personal financial statements?
No.
Q Prior to the completion of your work on the 2021 Statement of Financial Condition, did you have a general understanding of what ccounting Standards Codification 274

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provides?
No.
Q Prior to the completion of your work on the 2021 Statement of Financial Condition had anybody at the Trump Organization ever mentioned ccounting Standards Codification 274 to you?
Not that I know of.
Q Can you describe in general terms llen Weisselberg's role in preparing Mr. Trump's Statement of Financial Condition from 2016 to 2019?
He would review drafts with me that I would provide to him. In a lot of those drafts I would bring questions to him, he would make decisions based on the questions that I brought.
Q nd you said "drafts." Can you be more specific? Drafts of what?
Drafts of the supporting data spreadsheet.
Q So as a general matter you will bring drafts of the Supporting Data to Mr. Weisselberg with questions and he would make decisions. Is that fair?
That's fair.
Q ll right. nd can you describe in general terms Jeff McConney's role in preparing Mr. Trump's Statements of Financial Condition from 2016 to 2019?
It was similar, but I think with Jeff I would go to Jeff if I needed a specific document, if I needed a financial

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statement from some entity or something like that. I would go to Jeff and ask for it.
Q I meant did you in the time period I referenced, 2016 to 2019, review drafts of the Supporting Data with Mr. McConney, as well?
Yes.
Q Okay. Did you have an understanding as to whether you were the final decisionmaker on any valuation in the Statements of Financial Condition from 2016 to 2019?
Can you repeat the question, please?
Q Did you have an understanding as to whether you were the final decisionmaker on any valuation in the Statements of Financial Condition from 2016 to 2019?
Yes.
Q What was your understanding?
That I was not the final decisionmaker.
Q nd did you have an understanding as to who the final decisionmaker was?
Yes.
Q nd what was your understanding?
llen Weisselberg.
Q Okay. Let's go to Plaintiff's Exhibit 742.
Mr. Birney, do you see on the screen an Excel spreadsheet entitled, "Donald J. Trump Statement of Financial Condition as of June 30, 2016?"

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Yes.
Q Do you recognize this document?
Yes.
Q What do you recognize it to be?
draft of the Supporting Data spreadsheet.
MR. H REN: Your Honor, I think this document has been reviewed with other witnesses and the magic words may not have been said, so I'd just like to move it into evidence.
MR. ROBERT: I'm trying to keep order so we don't have the same document going around twice. To the extent it's not, statute of limitations objection.
THE COURT: Okay. To the extent it's not. It's now in over objection.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 756 in evidence.)
Q Who was the principal drafter of the spreadsheet on the screen?
What do you mean?
Q The spreadsheet itself as opposed to any decisions that may have led to numbers being included it in it. Did you prepare the spreadsheet?
I probably worked on the spreadsheet.
Q Did the process of preparing the Supporting Data for

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the 2016 Statement of Financial Condition involve more than one draft?
Yes.
Q How many approximately?
I don't know.
Q How many drafts in a typical year then would you go through?
Could be 20, could be 30. I really don't know.
Q ll right. Will you -- were you the decisionmaker on which valuation methods to choose -- excuse me.
Were you the decisionmaker on which valuation methods were used in the spreadsheet?
No.
Q Who was?
Either Jeff McConney or llen Weisselberg.
Q ll right. Can you be -- is it that one side on some and one side on others? Can you kind of explain your answer?
Sure. This was 2016 so this would have been the first year I was working on it so I would have just asked Jeff a lot of questions. I don't know if I even asked llen questions about this year if it even got to that point. It was probably just me and Jeff for things that I worked on for this year, so I don't know who made the ultimate decisions.
Q ll right. Did you follow a process to go from draft versions of the Supporting Data to the final version of the

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Supporting Data in 2016?
Can you repeat the question, please?
Q Did you follow a process to go from draft versions of the Supporting Data to the final version of the Supporting Data in 2016?
I don't really know.
Q Let's pull up some of your testimony to see if it refreshes your recollection.
MR. H REN: Let's go to page 103 of Mr. Birney's testimony. Well, first let's go to the first page. Could you go to the first page, please?
Q Mr. Birney, do you recall testifying under oath on June 25, 2020?
Not that specific date, but I do recall in 2020, yes.
MR. H REN: ll right. nd let's go to page 103.
Q Just if you take a look at page 103, starting at line six. It states:
"QUESTION: You mentioned earlier that you have meetings with Jeff McConney and llen Weisselberg to go over drafts of the spreadsheet -- sporting spreadsheet; right?
" NSWER: Yes.
"QUESTION: Between the first draft and the final draft, approximately how many meetings would there be in a typical year?
" NSWER: I don't know. It depends on the specific

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year. nywhere from -- I'm just -- it depends. It varies.
"QUESTION: You'd have at least one meeting a year; right?
" NSWER: Yes, there would be at least one meeting.
"QUESTION: Would there be only one meeting?
" NSWER: Probably not.
"QUESTION: So just try to give me an approximation; five meetings, between five and ten?
" NSWER: Between five and ten."
Now, does that testimony refresh your recollection as to any process you may have had in terms of going from the draft version of the Supporting Data to the final version of the Supporting Data in 2016?
Yes.
Q nd so what is your recollection?
Sorry. The reason I'm getting -- I don't know if that -- what we just looked at was specific to 2016, was it?
Q I think it was a general question with a general answer.
Giving -- I can give you a general answer.
Q Sure. Give me a general answer.
Sure. In 2016, we would -- I worked together with Jeff, but in general I would work on drafts of the spreadsheet. There would be meetings with Jeff McConney and llen Weisselberg. It could have been, yes, five to ten meetings to

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finalize it and then we would send it over to Mazars along with all of our backup and we would work with Mazars on the Statement of Financial Condition until we were done.
Q nd so were Jeff McConney and llen Weisselberg involved in finalizing the 2016 Statement of Financial Condition?
Sorry. One more time?
Q Were Jeff McConney and llen Weisselberg involved in finalizing the 2016 Statement of Financial Condition?
I imagine they were, yes.
Q You imagine or they were?
I know Jeff McConney was involved. I can't remember if llen was. He probably was involved.
Q ll right. nd during the course of preparing the 2016 Statement of Financial Condition did you understand that Mr. Weisselberg and Mr. McConney were your superiors?
Yes.
MR. KISE: Your Honor, not to interrupt, but it's a question regarding an exhibit that I think was just introduced, PX 1167. nd it took me a minute because I'm a little slow, but it's got 35 pages attached, but the native version these -- this appears to be two different documents I guess is my question. nd I just want to clear that up.
I'm sure, far be it for me to accuse the government of doing anything intentional, I am sure that, if anything,

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it's inadvertent or it could be that I'm mistaken. Often I am, but from what we can see of the native version of this e-mail that is the cover of Plaintiff's Exhibit 1167, the remaining pages that start with this part, with the handwriting on it were not part of the original attachment to the e-mail. The only thing attached to the e-mail was the Statement of Financial Condition and these remaining pages appear to be a different exhibit. I just didn't know if that was introduced. nd we don't have to take up courtroom time right now. I just wanted to place this on the record before we go farther. If they are not going to use this exhibit for the rest of the day, we can clear this up later, but I just didn't want to go any further without at least noting it.
THE COURT: Okay. ny response?
MR. H REN: Yes, I think we'll look at it at a break we. Can take a look at it and see if there was an inadvertent error.
MR. KISE: Thank you.
Q nd back to the exhibit that was on the screen , Exhibit 742. Mr. Birney, in this Supporting Data spreadsheet are there capitalization rates used to value assets? If it would help you to scroll through the document, I'm happy to direct you.
Please.

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MR. H REN: Could we go to 147, please?
Q So is there a cap rate reflected in Row 47?
Yes.
MR. H REN: Could we go to Row 104, please?
Q Is there a cap rate reflected in Row 104?
Yes.
Q Now, did you have an understanding when working on the 2016 Statement of Financial Condition as to who was the decisionmaker about which capitalization rates to use?
I really don't remember 2016.
Q Do you have a general recollection of yourself ever being the final decisionmaker about a cap rate to be used in the Supporting Data for Mr. Trump's Statement of Financial Condition?
I don't believe I was ever the final decisionmaker.
Q nd do you have a general understanding of who was the final decisionmaker about capitalization rates and Mr. Trump's Statements of Financial Condition?
Yes.
Q nd what's your understanding?
llen Weisselberg.
Q I'd like to just have pull up on the screen your prior testimony at page 191 beginning at line seven:
"QUESTION: So when you say that your role is just to update the spreadsheet, are you saying that you're not

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participating in the choice between cap rates?
" NSWER: I'm not the one making the choice.
"QUESTION: So who is the one making the choice?
" NSWER: Either Jeff McConney or llen Weisselberg on any given year."
I think in the answer you just gave to my question here your answer was llen Weisselberg, so I just want to clarify what was Jeff McConney's role in choosing capitalization rates speaking generally from Mr. Trump's Statement of Financial Condition?
He was involved.
Q nd can you describe his involvement, please?
Sure. Jeff would forward me e-mails from third parties that have lists of recent sales in the area. Those lists would have cap rates on them. I would then usually discuss that with Jeff or llen. It depends -- it really depends on the asset.
Q You said "it really depends on the asset." Can you be -- give any additional recollection you have about that?
Yes. I've talked on the phone with Jeff, a third party before asking about storefronts and cap rates to be used for storefronts in New York City. I think most of that is in the Supporting Data spreadsheets. But Jeff was involved in that and those are typically smaller than larger properties. I don't know if llen would have been 100 percent involved in those decisions.

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Q Okay. Let's move to Plaintiff's Exhibit 758.
Mr. Birney, the document on the screen, Plaintiff's Exhibit 758 is in evidence as the final 2017 Supporting Data spreadsheet. Do you recognize it as such?
I'll take your word.
Q Do you recognize it as a Supporting Data spreadsheet for Mr. Trump's Statement of Financial Condition as of June 30, 2017?
Yes.
Q Did you prepare this spreadsheet?
Probably.
Q nd earlier you gave me an answer about a number of drafts that you would go through in a typical year about -- number of drafts of the Supporting Data spreadsheet. Do you recall that?
Yes.
Q Did that -- would that same answer apply to the 2017 year?
Probably.
Q Were you the decisionmaker on valuation methods to use in the spreadsheet?
No.
Q Who was?
Either Jeff McConney or llen Weisselberg.
Q nd can you, you know, give anymore information about

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which of those two is, you know, more probable?
Probably llen Weisselberg.
Q nd you earlier described a process of reviewing the draft Supporting Data with Mr. McConney and Mr. Weisselberg. Do you recall that?
Yes.
Q Is that a process that you followed in 2017 as well?
Yes.
Q nd are there capitalization rates used to value assets in this spreadsheet?
Probably.
Q Did you have an understanding when working on the 2017 Statement of Financial Condition as to who was the ultimate decisionmaker about capitalization rates to use?
Probably.
Q Did you have an understanding?
I don't know if I had an understanding.
Q So you worked on this project in 2017; right?
Yes.
Q nd there are capitalization rates reflected in the spreadsheet?
Can you scroll down to --
Q Sure. Let's go to Row 68 as an example.
Yes.
Q Were you the final decisionmaker about capitalization

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rates to use in the 2017 Statement of Financial Condition?
No.
Q Who was?
Either Jeff McConney or llen Weisselberg, depending on the asset.
Q You say "depending on the asset." Were there some that Mr. Weisselberg chose for?
Yes.
Q Which were those?
It really depends. The reason I'm answering this way is as I've -- as we've spoken about in the past, when I update the spreadsheet there is a year like there are two years on every spreadsheet, right. So if I'm not making a change, if I'm valuing it the exact same way who is valuing it before, who is really making the decision that year, right? You have to go back to who made the decision the year before.
So ultimately, llen Weisselberg was probably -- had -- had -- had the authority to approve everything. I'm not sure if every single asset on this schedule was approved by llen.
Q nd jut so I understand if a capitalization rate was carried forward from the year before was it -- was a decision made to just carry it forward?
Maybe.
Q nd who would make a decision to just carry forward the exact same cap rate from the prior year?

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llen or Jeff.
Q ll right.
THE COURT: Ten-minute warning.
MR. H REN: Let's pull up Plaintiff's Exhibit 774.
Q Mr. Robert can correct me, but I think the magic words also might not have been said about this spreadsheet.
But Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
draft of the Supporting Data spreadsheet for the next year, 2018.
MR. H REN: I move this document into evidence to the extent it's not already in evidence.
MR. KISE: No objection.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 774 in evidence.)
Q Mr. Birney, did you draft the spreadsheet?
Probably.
Q You gave an answer earlier about going through 20 to 30 drafts of the Supporting Data. Would that answer apply to 2018 as well?
Yes. The reason I'm saying probably or the -- whatever is in the Column F, that wasn't me, the 4100.01.

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Q Oh, understood. We do I think have testimony on the record that those markings had come from the accounting firm, but as to the other information in the spreadsheet, that's not -- either the blue numbers or the red lettering on the top, you prepared the spreadsheet; is that right?
I probably prepared the spreadsheet. If you want to show the name it would help me tell.
Q You mean the file name?
File name.
Q But putting aside this particular file, you prepared the Supporting Data for the 2018 Statement of Financial Condition?
Yes.
Q Were you the decisionmaker about which valuation methods to use in the spreadsheet?
No.
Q Who was?
Either llen Weisselberg or Jeff McConney.
Q nd again, can you give the Court or me an indication as to which of those people is more probable?
Probably llen Weisselberg.
Q nd the process that you mentioned of reviewing the draft Supporting Data with Mr. McConney and Mr. Weisselberg, is that a process you would have followed in 2018 as well?
Yes.

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Q nd your answer concerning the choice of capitalization rates, you gave answers about that in the 2017 spreadsheet that we were looking at a few minutes ago?
Yes.
Q Would those answers apply to the 2018 Statement of Financial Condition, as well?
Yes, probably.
Q Well, let's just -- we might as well do it.
Mr. Birney, could you take a look at Row 47, please? You see there there is a cap rate of 2.6 percent?
Yes.
Q nd in Row 119 there is a cap rate of 2.36 percent?
Yes.
Q Were you the decisionmaker about which capitalization rates to use in the spreadsheet?
No.
Q Who was?
Jeff and llen.
Q nd when you say "Jeff and llen," you mean Jeff McConney and llen Weisselberg?
Yes.
Q ll right. Let's pull up on the screen Plaintiff's Exhibit 843. This document is in evidence as the Supporting Data for the June 30, 2019 Statement of Financial Condition. Mr. Birney, do you recognize this document?

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Yes.
Q Did you draft the supporting data for the 2019 Statement of Financial Condition?
In general, yes.
Q nd you gave an answer concerning a number of drafts that you would go through on a typical year would that answer apply to the 2019 Statement of Financial Condition?
Yes.
Q nd were you the decisionmaker about which valuation methods to use in the spreadsheet?
No.
Q Who was?
Either llenes Weisselberg or Jeff McConney.
Q nd can you give an indication as to which of those two people was more probable?
llen Weisselberg.
Q nd the process that you mentioned of going through drafts of the supporting data with Mr. McConney and Mr. Weisselberg, was that a process you filed in 2019?
Yes.
Q nd let's take a look at Row 66, please.
Mr. Birney, do you see that there is a cap rate there of 2.67 percent?
Yes.
Q Let's go to Row 100 , please.

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Do you see there there is a cap rate of 2.42 percent?
Yes.
Q Were you the ultimate decisionmaker regarding the capitalization rates to use in the 2019 Statement of Financial Condition?
No.
Q Who was?
Same as before, llen and Jeff.
Q nd you mean llen Weisselberg and Jeff McConney?
Yes.
Q ll right. Let's --
MR. H REN: I guess how close am I to the ten minutes?
THE COURT: You have another three or four if you want.
MR. H REN: It's a fortune.
Let's pull up on the screen Plaintiff's Exhibit 857.
Q Mr. Birney, the document on the screen is in evidence as the Supporting Data for the 2020 Statement of Financial Condition. Do you recognize this document?
Yes.
Q Was the process of preparing the Supporting Data for the 2020 Statement of Financial Condition in any way different than the process from 2016 to 2019?

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Yes.
Q How is it different?
There was more input from more people.
Q nd when you say "more people," who else was involved in -- who else was involved?
Myself, llen Weisselberg Jeff McConney, Ray Flores, Jody Whitsec, dam Rosen, lan Garten.
Q nd at the time llen Weisselberg was still the chief financial officer of the Trump Organization?
I think so.
Q What was Jeff McConney's position at the time?
I think he was controller.
Q nd how about Ray Flores?
Vice president development and acquisitions or something like that.
Q nd can you just give us a general idea of Mr. Flores' role in the 2020 Statement of Financial Condition?
Ray gave input on backup and certain cap rates, certain properties.
Q nd just so I have the list right, Mr. Garten was the chief legal officer at the time?
I think so.
Q nd Mr. Rosen worked under Mr. Garten; is that right?
He worked in the legal department.
Q So Mr. Garten was the senior most legal person involved

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in the 2020 Statement of Financial Condition?
Yes.
Q nd Mr. Weisselberg was the senior most accounting person involved in the 2020 Statement of Financial Condition?
Yes.
MR. H REN: ll right.
THE COURT: Before you go, let's revisit the important question of the warning. The ten-minute warning seems to make you all nervous and you're looking at the clock, you want to know how long -- I have a better idea. How about a five-minute warning and a one-minute warning? nybody object to that?
MR. W LL CE: No objection.
MR. H REN: We could use a little red light.
THE COURT: Or a sign or hold up my hands. ll right, 15-minute break. See you soon.
THE COURT OFFICER: Remain seated in the audience.
(Whereupon, there is a recess in the proceedings and the transcript continues on the following page.)

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THE COURT OFFICER: ll rise. Part 37 is back 24 session.
MR. KISE: While we are waiting for the witness, I think over the break, we reached an understanding and Ms. Faherty can state.
MS. F HERTY: Our PTG folks were able to resolve the issue. It seems it was a technological family coupling issue. Our goal to have a corrected exhibit in the morning. Some additional pages were added. That's all, Your Honor. I apologize for the mistake. We will correct it immediately.
THE COURT: I'm glad Mr. Kise caught you on it.
MS. F HERTY: Well, you know, I do try to sneak things in apparently.
MR. KISE: I'm a little slow, but I read things.
THE COURT: We are getting the witness, yes?
THE COURT OFFICER: The witness is here.
(Witness resumes the stand.)
THE COURT: Let's continue.
Q Welcome back, Mr. Birney.
Hi.
MR. H REN: Let's call up Plaintiff's Exhibit 1501.
Q Mr. Birney, this document is in evidence as the supporting data spreadsheet for the 2021 Statement of Financial Condition. Do you recognize it?

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I recognize the format of it, but not two of the notes.
Q By notes, you mean the information Excel E4 that refers to WP?
Yes.
Q But apart from those notes, do you recognize it to be a 2021 supporting data spreadsheet for Mr. Trump's Statement of Financial Condition?
Yes.
Q Can describe just in general terms the process of preparing the 2021 Statement of Financial Condition?
Yes. It was very similar to the 2020 statement. Wherever we pulled information from from 2020, I think why pulled it from 2021. There was one change for valuations that I can recall right now and that was the golf courses.
Q Just speaking about process, can you say who was involved in the process of preparing the 2021 statement?
Yes. It was the team that I had mentioned for 2020 except I do not believe llen Weisselberg was involved and Jeff McConney was barely involved.
Q ll right. Let's pull up on the screen a document that is Plaintiff's Exhibit 758.
Mr. Birney, this document is in evidence as the supporting data for Mr. Trump's 2017 Statement of Financial Condition.
MR. H REN: Could we scroll down to row 969, please.

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Q What is indicated to you by the information in columns B, C and H in row 969?
The triplex valuation for the previous year I believe is column H based on columns from Trump International Realty at 30,000 square feet multiplied by $10,900 per square feet.
Q I'll just note for the record the Court has reached an official understanding about the pronunciation. Triplex.
What did I say?
Q Triplex. It's very important here in this courtroom.
Sorry.
Q I would like to direct your attention to row 971. What is indicated to you by the information in columns B and C and G in that row?
The valuation for the triplex based on comp for 432 Park, 10,996.39 square feet multiplied by $10,625 per square-foot.
Q nd based on the information in columns B and C in row 969 and row 971, there was a change in the square footage used for Mr. Trump's triplex apartment between the 2016 and 2017 Statements of Financial Condition, right?
Yes.
Q Do you have an understanding of any events that led to that change in square footage?
Yes.
Q What's your understanding?

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My understanding is there was an article written that stated that Mr. Trump's triplex apartment was actually 10,900 or so square feet and then we used that -- we verified that square footage internally and then we used that for the 2017 Statement of Financial Condition.
Q You say "we verified that internally." Who was involved in that verification?
llen Weisselberg, probably Jeff McConney and I believe Stephanie Lennig.
Q How do you spell her name?
L-E-N-N-I-G.
Q Thank you.
MR. H REN: Let's pull up Plaintiff's Exhibit 1605 unless there was a different version of this marked yesterday. I understand this document is in evidence already.
Q Mr. Birney, do you see that the title of the article is "Donald Trump has been lying about the size of his penthouse"?
Yes.
Q Does the article have a date?
May 3, 2017.
Q Is this the article that prompted the change in square footage reported in the supporting data to Mr. Trump's Statement of Financial Condition?
Probably.

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Q Is it the article or was there some other article?
I don't know.
MR. H REN: Let's turn back to the 2016, Plaintiff's Exhibit 756.
Q Do you remember that we agreed there is a date on the independent accountant's compilation report on page two. The date is March 10, 2017, right?
Yes.
Q ll right. Let's move to plaintiff's 01324.
Mr. Birney, this document is in evidence. Does it appear to be an e-mail from Dan lexander at Forbes to llen Weisselberg and Jeff McConney on February 22, 2017?
Yes.
MR. H REN: nd could you scroll down just generally through the e-mail, so Mr. Birney can look at it.
Q Mr. Birney, do you see on the second page of the exhibit, there's an item entitled, "Trump Tower Penthouse"?
Yes.
Q Does it state a square footage?
Yes.
Q What is the square footage that is stated?
10,996.
MR. H REN: Let's pull up Plaintiff's Exhibit 1327. We apparently have a version of this that's already in evidence, so I would like to use that one instead of this

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one. Let's pull up Plaintiff's Exhibit 1345.
Q Okay. Mr. Birney, Plaintiff's Exhibit 1345 is in evidence already.
MR. H REN: If we could scroll down, please. Continue to scroll. Please continue. Now scroll back up to the top of this e-mail.
Q Mr. Birney, do you see on the screen an e-mail from a person named Noah Kirsch to lan Garten on March 3, 2017?
Yes.
Q nd do you see that the subject is urgent in all caps fact checking inquiry from Forbes?
Yes.
Q If you could scroll down, please. Do you see the item there entitled Trump Tower penthouse in all caps?
Yes.
Q Do you see where the e-mail states under the heading Trump Tower penthouse, "president Trump has told Forbes in the past that his penthouse occupies 33,000 square feet comprising the entirety of the floors 66-68 of Trump Tower. nd it goes on is the 1994 declaration accurate and up-to-date. It shows president Trump's apartment is 1009996.39 square feet. Do you see that.
Yes.
Q Did llen Weisselberg ever inform you before the 2016 Statement of Financial Condition was finalized that he had been

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notified by e-mail from Forbes that Mr. Trump's triplex apartment was 10,996 square feet?
Just to be clear, you said 2016?
Q Yes.
I don't think he did.
Q Did Jeff McConney ever inform you before the 2016 Statement of Financial Condition was finalized that he had been notified by e-mail from Forbes that Mr. Trump's triplex apartment was 10,996 square feet?
I don't -- I don't know. I don't think he did.
Q Let's go back to the 2017 supporting data, Plaintiff's Exhibit 758. Let's look at again row 969 actually look at row 971. Do you see where it states "triplex-based on comp from 432 Park"?
Yes.
MR. H REN: Let's pull up Plaintiff's Exhibit 767.
Q Mr. Birney, could you look through the document?
Yes.
Q Do you recognize it?
Yes.
Q What do you recognize it to be?
The backup to the triplex valued for the 2017.
MR. H REN: I move this document into evidence.
MR. KISE: For what purpose? It's hearsay. What's it being admitted for?

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THE COURT: It is hearsay. Depends on -- actually, it depends upon what they're trying to admit it for. What's the purpose of admitting it?
MR. H REN: The witness just testified that this was the backup to the 2017 valuation of Mr. Trump's triplex.
THE COURT: Well, it's in for that so --
MR. KISE: It is in for the fact that it is a backup, but not --
THE COURT: But not for the truth --
MR. KISE: Right.
THE COURT: Contents.
MR. KISE: Okay.
THE COURT: Okay.
Q Mr. Birney, there's information contained on the first page that is in handwriting. Do you see that?
Yes.
Q What does that information represent?
The square footage of Mr. Trump's triplex.
Q Do you have an understanding as to whose handwriting is on this page?
I think is Stephanie Lennig. I don't know for sure.
Q That was the person you mentioned who was involved in verifying the square footage of Mr. Trump's triplex after the article came out?
Yes.

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Q Let's turn to page two of the exhibit. Do you have an understanding what is reflected in the mathematical computations on the right side of this page?
Yes.
Q nd what is your understanding?
It's the dollar per square-foot.
Q The dollar per square-foot of what?
Of this unit in 432 Park.
Q nd the dollar per square-foot that's calculated here was then used to value Mr. Trump's triplex in the 2017 Statement of Financial Condition; is that right?
Can you show me the previous exhibit?
Q Sure.
MR. H REN: Let's go back to Plaintiff's Exhibit 758 and down to row 971.
Probably. It's not the same number, but it's very close to that number.
Q It says 432 Park in the spreadsheet, doesn't it?
Yes.
Q nd can you look at Exhibit 767 on the second page. Does that also reference 432 Park?
MR. H REN: Could you zoom -- yeah.
Yes.
Q So does the information on this page represent support for the $10,625 per square-foot number that was used to value

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Mr. Trump's triplex for the 2107 statement?
It does. I just don't know why we wouldn't have used 10,624 instead of 625. It is very particular.
Q Might be a dollar off?
Sorry?
Q So it might be a dollar off?
Yes.
Q Let's look at page -- continuing on page two of the exhibit. Do you see at the bottom there is an Internet address https://www.alux.com and then it continues?
Yes.
Q What do you understand that to refer to?
I understand that would be the website that this came from.
Q So it is a website entitled alux.com?
That is my understanding.
Q Did you go to alux.com to find a property to use to value Mr. Trump's triplex for the 2017 Statement of Financial Condition?
I think I did.
Q nd tell us what you did when you did that. In other words, did you follow a process? How did you identify this process as something that should be used?
I re -- I think I Google-searched recent sales and/or like penthouse sales in Manhattan.

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Q nd you happened upon an article entitled, "Own the Most Expensive Penthouse in U.S. Now!"?
Yes.
Q For this property to be used to value Mr. Trump's triplex for the 2017 Statement of Financial Condition, did you discuss it with anybody?
Yes.
Q Who did you discuss it with?
llen Weisselberg or Jeff McConney.
Q Did either of them direct you to use this comparable as opposed to any others that you had identified?
I don't remember.
Q In 2017, would you have chosen a comparable for Mr. Trump's triplex apartment without being told to do so by Jeff McConney or llen Weisselberg?
No.
MR. H REN: Let's go to Plaintiff's Exhibit 843, please. Could we go down to row 1011.
Q Mr. Birney, do you have an understanding of the information contained in columns B and C in row 1011?
Yes.
Q nd what is your understanding?
So description of the valuation for Mr. Trump's triplex in 2019.
Q What does it indicate to you about what information was

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used in that valuation?
It indicates there was a comp used from 220 Central Park South that my understanding is that there was a $10,348 per square-foot number on that 220 Central Park South property.
Q nd so the 10,348 per square-foot from 220 Central Park South was used to value Mr. Trump's triplex in the June 30, 2019 Statement of Financial Condition?
I think so.
MR. H REN: Let's pull up Plaintiff's Exhibit 2530.
Q Mr. Birney, do you recognize this document?
Not really. I recognize the first page.
Q What is contained on the first page?
First page looks like the same thing as the last year, the square footage for Mr. Trump's triplex.
Q It appears to be the same handwriting that was used in the 2017 version we looked at a few minutes ago?
Yes.
Q Do you see on the second page there is an article from therealdeal.com?
Yes.
Q Do you see at the top there is a date of September 25, 2019?
Yes.
Q Do you see there's also something at the top that says, "Ken Griffin, 220 Central Park South Priciest U.S. Home Sale.'

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Yes.
Q Do you see in the article there is a highlighted price of where it says record shattering 238 million?
Yes.
Q Do you see in the paragraph that follows, " 23,000 square-foot quadruplex"?
Yes.
Q Do you see that 23,000 square-foot is highlighted?
Yes.
Q Do you see that below there is a strip of what I'll refer to as adding machine math?
Yes.
Q Do you have an understanding of what is computed by that adding machine math?
The price per square-foot for this unit.
Q What is the price per square-foot that's computed?
$10,347.82.
MR. H REN: Can we go back to Plaintiff's Exhibit 843.
Q Does that number match the 10,348 per square-foot that's used in row 1011 of this spreadsheet?
Yes.
Q Having now seen that information, do you recognize Plaintiff's Exhibit 2530 as the backup or the valuation of Mr. Trump's triplex in 2019?

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Yes.
MR. H REN: Your Honor, I move this document into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 2530.)
MR. KISE: Same objection, Your Honor, as to the purpose that it is being moved into evidence for. lso, I just have a general objection. You were talking before about moving things along. What is the relevance of all of this? I mean, I know we have a dispute over whether or not the square footage was right or wrong, should have been right or wrong, but this doesn't really go to that. This just goes to the price per square-foot in 2019 -- after the square footage number was corrected. So I'm just not sure what relevance this exhibit has or the other one frankly.
THE COURT: Well, let's hear the explanation.
MR. H REN: I would just say the price per square-foot is another variable in the valuation and its choice could be evidence to matters that are relevant to issues being tried.
MR. KISE: What issue is being tried on that point, as to that point?
MR. H REN: There are additional elements of the other counts that haven't been decided on summary judgment

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for which a choice of a price per square-foot that is record-shattering could be relevant, and I would rather not discuss that in front of the witness.
THE COURT: Objection overruled. It's relevant to the whole process it seems to me evaluating these properties.
(Continued on the next page.)

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Q Mr. Birney, do you have -- let me -- he already testified to that. Excuse me one second.
(Whereupon, there is a pause in the proceedings.)
MR. H REN: Just to clarify, Your Honor, I believe I moved Exhibit 2530 into evidence, then the objection was made that it's hearsay and I responded that it's the backup of -- for this valuation in 2019 and it's admissible for that purpose. I just wanted to clarify.
THE COURT: Yes.
Q ll right. So Mr. Birney, do you see on the top of page three of the exhibit -- excuse me -- yes, in the middle of page three of the exhibit there is a headline that reads: "Ken Griffen sets U.S. home record with $238 million buy at 220 CPS?"
Yes.
Q Do you see that it says it's the most expensive home ever sold in the U.S.?
Yes.
Q So was an article in the Real Deal describing the most expensive home ever sold in the United States the basis for the price per square foot used to value Mr. Trump's triplex for the 2019 Statement of Financial Condition?
Yes.
Q ll right. Let's go back to Plaintiff's Exhibit 758. I'd like to direct your attention to Rows 214 through 245.

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nd just in general what's your understanding of the information contained in those rows and ending at Column H?
Which rows one more time?
Q 214 to 245.
It's the valuation of the Mar- -Lago club.
Q nd Row 215 says "value if sold to an individual." Do you see that?
Yes.
Q What does that mean?
MR. KISE: Objection. Other than what it says?
Q Do you have an understanding of what that means other than what it says?
I don't know if -- I don't -- I don't think I -- I don't think I wrote that. I don't know if I have an understanding of it.
Q Okay.
THE COURT: Objection -- well, it's -- my usual or often response, let's see if he can answer it. He says he can't answer it, so.
Q So Mr. Birney, do you see that there are items identified as comparable properties under Row 217?
Can you repeat the question, please?
MR. H REN: Could I have a read back?
THE COURT: Okay. Read back, please.
(Whereupon, the requested portion of the

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proceedings was read back by the court reporter.)
Yes.
Q nd do you have an understanding of what the phrase "comparable properties" as used in Cell C 217 means?
Yes.
Q nd what's your understanding?
The properties that were used to obtain looks like a value per acre.
Q But just in terms of the -- I understand that the phrase refers to the properties that follow it, right. In other words, there are properties listed under Row 217. Do you see that?
Yes.
Q I just want to get an understanding of whether you understand the phrase "comparable properties" to mean anything other than those properties that are listed.
Let me withdraw the question.
Just the phrase "comparable properties" as used here, do you have an understanding of what it means?
My understanding is it means the properties that were used to valuate the value of Mar- -Lago in 2017 and '16.
Q Okay. Now, do you see where it says "89 Little Road, 1695 Drive North Ocean Way and 540 South Ocean Boulevard?"
Yes.
Q re those all private residences?

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I think they are.
Q nd just speaking generally do you have an understanding that the properties identified as comparable properties in the valuations of the Mar- -Lago Club from 2016 to 2021 were private residences?
I think they were private residences.
Q ll right. Who had the authority, if you know, to approve or reject a particular sale as a comparable for Mar- -Lago in the 2017 statement?
I don't -- I don't really remember, but it's -- Jeff McConney or llen Weisselberg.
Q nd who had the authority to approve or reject a particular sale as a comparable for Mar- -Lago under the 2016 statement?
I don't remember 2016. I don't know if that -- those sales were already filled in or not by the time Jeff e-mailed me.
Q Were you ever the person who had authority to approve or reject a particular sale as a comparable for Mar- -Lago in any of Statements of Financial Condition that you worked on?
Can you please repeat the question?
MR. H REN: Could I have a read back, please?
THE COURT: Please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

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Ultimately, no.
Q Now, can you just describe in general in this document how the value of Mar- -Lago is calculated?
Yes.
Q If you need us to move to particular cells, feel free to direct us.
Yes, there were three properties used where their price was divided by the acreage to get a value per acre. That value per acre was averaged it appears.
Q nd just so the record is clear, which cells are you referring to?
For the numbers D 219 down to E 233.
Q Okay. Thank you.
From there the average value per acre was multiplied by the acreage of Mar- -Lago of 18.81 to get a value, then there were certain things added and subtracted to that figure to get the ultimate value.
Q nd can you just direct us to where the average price per acre is multiplied by the acreage. Where does that happen?
So cell G 235 and cell H 235.
Q nd G is for 2017 and H is for 2016; is that right?
Yes.
Q Okay. nd the adjustments that you mentioned, where did those occur?
Cells G and H of -- I think that's 237 row,

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22.9 million and 22.5 million added for the construction of grand ballroom and beach cabanas adjusted for inflation. If I remember there is a calculation off to the -- it's either below or up above to the right for that, so it says "see below," so it's probably below.

MR. H REN: You can scroll down a little bit.

Q So what you're describing is happening starting at Row 248; is that right?

Yes.

Q Okay. nd just so I understand the average value per acre and the multiplication to get essentially a value of the total acreage is done based on the private residences that are identified as comparables; is that right?

The private residences that are what?

Q Identified as comparables?

Yes.

Q Okay. nd -- but then there is additional value added for construction of a grand ballroom and beach cabanas that are club facilities; is that right?

I don't know how to answer that.

Q Is the grand ballroom used at the club?

t Mar- -Lago, yes.

Q nd are the beach cabanas used at the club?

Yes.

Q So there is -- some of the valuation is done based on

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residential comparables and acres, but components of the club are added to it; is that right?

Yes.

Q Okay. nd is the method that you described in terms of the value per acre identified from the comparables and then the multiplication across the acreage of Mar- -Lago, is that used on the statements from 2016 to 2021?

Can you repeat the question, please?

MR. H REN: Can I have a read back, please?

THE COURT: Please.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

No. I believe it was used in 2016 through 2019 and then I didn't value it in 2020 and 2021. I think that was valued by Jody Whitsec (ph).

Q Is the method of taking a price per acre from comparables and then multiplying it across the acreage of Mar- -Lago, is that used in 2020 and 2021?

I don't remember.

Q ll right. Mr. Birney, let's look at Exhibit 1013.

Can we go back to clarify something?

Q Sure.

Just can you pull the last one up?

Q Sure. So for the record we're looking again at Plaintiff's Exhibit 758.

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Can you scroll up to the beginning of Mar- -Lago? No. Sorry, just -- so as we were going through the valuation I remember why I have an understanding of why that first part was written because we added things back to the location that a private residence wouldn't have.

Q Can you direct us to the particular cell that you're referring to?

Yes.

Q So let's go down to Row 214 is where it starts. So which information are you referring to?

So you asked me if I had an understanding of value if sold to an individual.

Q Sure.

I have an understanding after looking through the valuation. I believe they -- we valued it based on residential properties but then added things that weren't in private residences and then removed things that clubs had that private residences didn't have like the membership deposits refundable. I think it's just a clarifying sentence. gain, I don't think I wrote that, but that's the understanding I have of that now.

Q nd do you have an understanding of whether that phrase is contained in copies of the Jeff Supporting Data before you began to work on the Statement of Financial Condition?

I don't know. We can look if you want.

Q But if it had been contained and it was just carried

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forward would you have just carried it forward?

Yes. nd it looks like the 2016 information was used in 2017, so that's a possibility.

MR. H REN: Okay. nd before we move on to Exhibit 1013, can we call up Exhibit -- Plaintiff's Exhibit 857? nd can you scroll down? Keep scrolling. Keep scrolling. nd a little bit more, like three more rows.

Q Okay. Mr. Birney, this is the 2020 Supporting Data for Mr. Trump's Statement of Financial Condition. Do you see that at the top?

Yes.

Q nd are there still private residences used as comparables to generate an average price per acre?

Can you scroll up just a few rows? Yes.

Q nd can we scroll down just a little bit more? nd do you see in Rows 235 to 246 that the average price per acre is multiplied by the acreage?

Yes.

MR. H REN: Okay. Let's call up Plaintiff's Exhibit 1501.

Q s we talked about earlier this is the Supporting Data spreadsheet for the 2021 Statement of Financial Condition.

MR. H REN: Could we scroll down to around the same place?

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Q Mr. Birney, do you see beginning in Row 201 it states "the Mar- -Lago club value if sold to an individual?"
Yes.
Q nd do you see --
MR. H REN: Scroll down a little bit more.
Q Row 231 down to 248, are those private residence comparables?
Yes.
Q nd in Rows 250 and 251 are they -- is the average price per acre multiplied by acreage?
Yes.
MR. H REN: ll right. So let's call up Plaintiff's Exhibit 1013.
THE COURT: It's just about five-minute warning time and I want to see if I can clarify something based on something that someone said a little while ago.
Let me ask plaintiffs first. Do you have an official position on the square footage of the triplex?
MR. W LL CE: n official position as to what it was or -- I think we do. I think we believe it was 10996.39 square feet.
THE COURT: Okay. Defendant same question. Do you have an official position on the square footage of the triplex at the times in issue here?
MR. KISE: t the time at issue? You mean as of

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today?
THE COURT: No. s of 2011 and 2021 say?
MR. KISE: Well, I mean, I think the record has established that it's 10,996 square feet. The operative question I think was when we knew that and when we fixed it.
THE COURT: I understand that.
MR. KISE: That's why I'm just not sure what Your Honor's question about is our official position.
THE COURT: I can't think of a simpler way to put it. I'm trying to narrow the issues. I thought you had suggested earlier that there was some dispute about the actual footage.
MR. KISE: I don't think there is a dispute about the actual -- I don't want to speak for everyone at the table. I don't think there is a dispute about the actual square footage at this point.
THE COURT: Good. I wasn't trying to get to those secondary tertiary issues.
MR. KISE: Okay.
THE COURT: Okay, five-minute warning.
MR. H REN: Okay.
MR. KISE: By the way, I like the ten-minute warning better because it gives you something to look forward to.
THE COURT: I'll accommodate you.

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Q Mr. Birney, we only have a short time left for the day. You see at the top of this document it states "Deed of Development Rights?"
Yes.
Q Do you see a series of clauses beginning with the word "whereas" on the first page?
Yes.
Q nd do you see on the second page it states, quote, "the Club and Trump for good and valuable consideration, the receipt and sufficiency of which is acknowledged by these presents, do hereby transfer, grant, bargain, sell, alien, remise, release, convey, and confirm unto the National Trust to the extent that such rights have not already been transferred through the Deed of Conservation and Preservation Easement, any and all of their rights to develop the property for any usage other than club usage?"
Yes.
Q Were you ever shown this document by Jeff McConney while you were working on the Statement of Financial Condition for Mr. Trump?
I don't think so.
Q Were you ever shown this document by llen Weisselberg while you were working on the Statement of Financial Condition for Mr. Trump?
I don't think so.

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Q Do you recall when, if at all, you first saw this document?
Yes.
Q nd when was that?
In preparation for -- actually, in the -- in our previous interviews with the G's office.
Q nd apart from this 2002 Deed of Development Rights, did you ever become aware that a Deed of Conservation and Preservation Easement existed on the Mar- -Lago property?
Was I ever made aware?
Q Yes.
I don't believe I was.
Q Okay.
MR. H REN: I think it's a good place to end for the day. Is that okay? Your Honor, I move the Deed of Development Rights into evidence.
THE COURT: It's in. Granted.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1013 in evidence.)
MR. KISE: I don't know that that's a complete exhibit and what's the purpose it's being offered for?
MR. H REN: I think it's identified as relevant to the issues in the case and --
MR. KISE: Okay, but this witness has no

foundation. You just asked him whether he'd ever seen it before, that's all.

THE COURT: Well, I think that's -- well, I don't want to say what the point is.

By the way, Mr. Kise, just to clear up a misunderstanding between us, maybe what happened before was you said something about we have an issue with the square footage. I was taking that to mean how many square feet. You meant it more in terms of the use, the history, the knowledge, the notice, etc.

MR. KISE: Understood.

THE COURT: Yes. ll right. So just this one page? I don't know what else.

MR. H REN: The document is a two-page or three-page document. It contains the first page of the deed, a signed page, page two, what appears to be a notarization on page three and then in Exhibit describing the property. nd I just note that this document was produced by the defendants in discovery in this case.

THE COURT: If there is any objection to any or all of it, they're overruled. Clearly relevant.

Okay. Tomorrow at ten o'clock as usual. See you then.

MS. F HERTY: Your Honor, can we have an admonition to the witness? He's an employee of the -- thank you, Your

Honor.

THE COURT: Please do not -- all right. I direct you not to speak to anybody about this case while you're still a witness and you still are a witness at least until tomorrow.

THE WITNESS: Okay.

(Whereupon, the witness is excused from the witness stand and the trial proceedings is adjourned to October 13, 2023 at 10:00 a.m.)

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In The Matter Of:

NYS ttorney General v.
Donald J. Trump, et al.

Patrick Birney
October 13, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

60 Centre Street
New York, New York 10013
October 13, 2023

B E F O R E:

HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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Senior Court Reporters

THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Tommy, do they pay you by the word also?

I understand Counsel want to have a little discussion up here, what I call front bar?

(Whereupon, there is an off-the-record discussion held.)

THE COURT: On the record.

Before we get back with the witnesses, we have some housekeeping to do. Maybe I'll ask plaintiff, just I'd like to go from left to right. They want to go first.

MS. F HERTY: Your Honor, just to clean up an issue that arose yesterday during one of Mr. Birney's testimony, there was an exhibit that was admitted into the record, specifically it was Plaintiff's PX 1167.

Counsel stood up, raised the question because there appeared to be additional pages at the end of that particular exhibit. Full disclosure, I've had our technology group run down the issue and it appears when we received documents sent over to us in their original form

there was additional metadata that added those papers onto it when we put everything in a material exhibit form. They were not apart of that exhibit, so we had separated the additional pages and the testimony received on the central portion of Plaintiff's Exhibit 1167, the Statement of Financial Condition is just the Statement of Financial Condition.

So Counsel can inspect the exhibit. The additional pages are removed and we would just ask that the Court admit this clean version of Plaintiff's Exhibit 1167 as it's been corrected.

THE COURT: Cleanliness is next to Godliness, so we definitely want a clean copy.

MS. F HERTY: Thank you, Your Honor.

THE COURT: nd defendants are fine with that?

MR. KISE: Yes.

MS. F HERTY: Yes.

THE COURT: ll right. nything else from the plaintiff on the housekeeping arena?

MR. KISE: Thank you, Judge. Just briefly, the ruling yesterday on Ms. Mouradian's deposition excerpts, I just wanted to ask maybe what turns out to be a clarifying question and maybe not. Do you have it there, Your Honor? I mean, I have it.

THE COURT: I'm somewhat familiar. I read it all.

MR. KISE: Okay. So in the communication to the Court originally there were plaintiff's objections of the defendant's designations and then our objections to their designations and what I'm speaking specifically about is the objection -- plaintiff's objection to defendant's designation of page 103, lines 12 to 18.

In the -- so there is two issues I'd like to bring up. First of all, in the ruling, the ruling excludes ten pages, not six lines.

THE COURT: That was a mistake.

MR. KISE: I thought so, but I'm like wait.

Okay, so that's one.

So it's any ruling would then be limited to these six lines if I don't convince you to change your mind on the six lines, which I might not.

THE COURT: Probably not.

MR. KISE: Okay. So on those six lines, I'm referring to page 103, lines 12 to 18.

MS. GREENFIELD: I'm sorry, Counselor. Just to clarify, I believe the ruling was that's admissible; correct?

MR. KISE: No, it says "inadmissible."

MS. GREENFIELD: Okay. Hold on one second.

MR. KISE: I mean, if it's all admissible, I can sit down. I think it is.

MS. GREENFIELD: Give me one second.

MR. MER: Your Honor, I'm wondering since this is the first time we're hearing of this issue that maybe we can confer and just understand what the issue is.

THE COURT: Sure. Why don't you do that. I assume it would be very quick.

MR. MER: I mean, not now so we don't hold up the witness.

MR. KISE: Your Honor, this has been debated for, like, a week and a half. It's not the first time they heard the issue. They made the objection. It's a very simple issue, about six lines.

MR. MER: I think you're now saying there is a ruling on something that is not consistent with what the Court asked us to do and this is the first time I'm hearing that.

MR. KISE: No, I think the judge said that was a mistake.

THE COURT: You mean the ten pages?

MR. KISE: Yes, the ten pages.

THE COURT: Obviously that's unintentional.

MR. KISE: I'm not taking issue with that.

THE COURT: Mr. Kise, can we resolve this at the next break?

MR. KISE: Sure.

THE COURT: I thought so. We'll make sure we look at it and confer with the People if we need to.

Ready for the witness? Let's call the witness back.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: I'll remind the witness, as I always do, that he's still under oath.

nd let's continue with the direct examination.

MR. H REN: Thank you, Your Honor.

DIRECT EX MIN TION

BY MR. H REN:

Q Good morning, Mr. Birney. Good morning.

Morning.

MR. H REN: Let's call up Plaintiff's Exhibit 3030.

Q Mr. Birney, do you recognize this document?

Yes.

Q What do you recognize it to be?

Newspaper article and a note.

Q Do you have an understanding of who the note is from?

Yes.

Q nd what is your understanding?

The note is from llen Weisselberg.

Q nd do you see where the note states -- well, actually,

can you read Mr. Weisselberg's note into the record? Just because you're probably more familiar with his handwriting than I am.

Yes. "Patrick, hold for next year DJT FS," probably meaning financial statement. "Let's see what it ends up selling for. llen."

Q Thank you.

nd do you understand the "F/S" in the note to refer to Mr. Trump's Statement of Financial Condition?

Yes.

MR. H REN: I'd like to move this document into evidence.

MR. ROBERT: To the extent it's being introduced just for notice of it and not the facts of what's contained in the article. nd furthermore, do we have a date that we can associate with this? Because it looks like it's a PostIt and an article with no date before we put it into evidence.

THE COURT: Let's start with the date.

MR. H REN: My understanding is that this is a 2018 news article. It doesn't say that here, but it will become clear with the subsequent exhibit that's already been admitted into evidence that it is included in the 2019 Mar- -Lago valuation backup.

THE COURT: Considering that the note, I don't know

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that the date particularly matters. We know who it's from certainly.
MR. ROBERT: If he can connect it up in a little while as to what the date is, I have no objection to giving him the room to do that so long as we preserve the objection as to the hearsay portion of the article. We're not disputing this is Mr. Weisselberg's name -- signature on the PostIt.
THE COURT: Yes. It's not coming in for the truth of its contents. So to that extent, objection sustained.
MR. ROBERT: Thank you, sir.
Q So just looking at the language of the article, Mr. Birney.
THE COURT: You want a clarification?
MR. SOLOMON: Yes. I do want a clarification because I want -- the article is not being admitted for the truth, but the PostIt is different. The PostIt has been established is a note from Mr. Weisselberg to Patrick directing him to do something.
MR. ROBERT: I'm not disputing that's Mr. Weisselberg's note. I'm just saying I don't know what year it's from or what backup this is supposed to be part of. That's all.
THE COURT: Well, Mr. Solomon is correct and I should have been more specific. I just meant the article

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itself is not coming in for the truth. s for the note, I think it comes in for various reasons.
MR. SOLOMON: Thank you, Your Honor.
THE COURT: Okay. Thank you.
Q Mr. Birney, what is the news clipping in this document about?
property for sale.
Q nd just focusing on the first paragraph of the article, do you see where it states "Broadway producer and Palm Beach socialite Terry llen Kramer is listing La Follia, her chateau-like Palm Beach compound for $135 million?"
Yes.
Q nd so this is the potential sale that Mr. Weisselberg directed you to hold for next year; is that right?
If the sticky was on the newspaper article.
Q They were produced to us in this form together as one document. Do you have a direction of keeping these two pieces of information in your files and saving them for a subsequent year?
I probably kept it, yes.
MR. H REN: Okay. Let's turn to the Plaintiff's Exhibit 843, please. It's the 2019 Supporting Data.
nd could we scroll to Rows 218? nd scroll down to 259. Scroll down a little bit more, please.
Q So Mr. Birney, can you describe in general terms the

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valuation contained between Rows 218 and 259? What is it a valuation of?
It's a valuation of Mar- -Lago.
Q Okay. nd I just want to focus you on Rows 222 to Row 245. There is a comparable property -- excuse me. 222 to 225. I misspoke.
There is a comparable property identified there called 60 Blossom Way. Do you see that?
Yes.
Q nd do you have an understanding of the computation occurring in cells D 223 to D 225?
Yes.
Q What's your understanding of that computation?
It's the selling price divided by the number of acres to get a value per acre.
Q nd same question for the computation that occurs between Rows 228 and 230 in Column D.
Same answer.
Q So there is a price 78,291,000 divided by 2.61 acres to yield $29,996,552 per acre?
Yes.
Q Do you have an understanding of how the price per acre figures in column D in the portion of the spreadsheet that we're looking at factor into the valuation of Mar- -Lago in this year?
Can you repeat the question?

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Q I'll ask it in a more direct way.
Price per acre that's computed in Column D, that yields a result in cell D 248; is that right?
Yes, it appears to be an average value per acre.
Q nd then that's multiplied by the acreage in Column G; right?
In Column G, yes. G 50 is a multiplication of the acreage.
Q nd the information?
THE COURT: Wait. Hold on one second. It's difficult to hear you, especially out there. Either move the mic up. nd I think you tend to swallow your words a little bit. Try to be a little slower, a little louder.
MR. H REN: I will do my best.
THE COURT: That's better.
Q Mr. Birney, I just want to clarify one thing. The value per acre in Cell D 230 comes from the property 1295 South Ocean. m I reading that correctly?
That's what it looks like.
MR. H REN: Okay. Let's call up Plaintiff's Exhibit 3026.
Q Mr. Birney, do you recognize this document?
I recognize it to be an e-mail.
Q Is it an e-mail from llen Weisselberg to you on September 10, 2019?

Yes.
Q And in the e-mail does Mr. Weisselberg forward you a news article pertaining to a $99 million Florida property transaction?
Yes.
MR. HAREN: I'd like to move this document into evidence.
MR. ROBERT: Same objection as to the hearsay in the news article.
THE COURT: And the same ruling. The news article is not coming in for the truth of its contents, but for whatever notice it might provide or other information.
MR. ROBERT: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3026 in evidence.)
Q And Mr. Birney, do you see what Mr. Weisselberg wrote to you, quote, "For the SOFC?"
Yes.
Q What -- did you have an understanding of what he meant by that?
Yes.
Q And what was your understanding?
Let's look at this for the Statement of Financial Condition.

MR. HAREN: All right. Let's call up Plaintiff's Exhibit 1040, and this document is already in evidence.
Q Mr. Birney, this is a 20-page document, so I would appreciate if you took a moment to look through it.
Have you had sufficient time to review the document?
I'm through about half.
Q Okay.
Okay.
Q Thank you.
MR. HAREN: Please turn to page four of the exhibit.
Q Is this the same e-mail that we saw in Plaintiff's Exhibit 3026?
It looks like it.
Q And it contains a communication from Mr. Weisselberg to you that states, quote, "For the SOFC."
Did you retain his e-mail and include it in the document that is Plaintiff's Exhibit 1040?
Can you repeat the question?
Q Did you retain Mr. Weisselberg's e-mail that states "For the SOFC" and then include it in the document that is Plaintiff's Exhibit 140 -- 1040?
Is this -- is that what this means, Plaintiff's Exhibit?
Q Yes, excuse me.

Okay. I probably retained this.
Q So you followed the instruction that Mr. Weisselberg gave you to keep that information for the SOFC?
I don't know that he said keep it for the SOFC, I think, but I kept it.
Q For the SOFC?
For the SOFC, yes.
Q All right. Let's look at the second page of the document. Do you see in the e-mail -- excuse me -- in the document there is an e-mail from Mr. Weisselberg to you dated September 11, 2019 that states, quote, "More info on the house purchase in PB?"
Yes.
Q What did you understand Mr. Weisselberg to mean by that?
He is providing me additional information on a Palm Beach house purchase.
Q And then the first page of the document contains -- or can you describe to me what is contained on the first page of the document?
Yes, it looks like a newspaper clipping that shows and appears to be a transaction for 60 Blossom Way in Palm Beach. There is a calculation on it that gives a price breaker, probably similar to what we saw on the Supporting Data spreadsheet if I had to guess.

Q Do you see that 60 Blossom Way 99.1 million and 3.5 acres are highlighted?
Yes.
Q Did you highlight that text?
Maybe.
Q Do you have an understanding of what the highlighting indicates?
Yes.
Q And what is your understanding?
The information is highlighted that went in the calculation on the adding machine tape in front of us.
Q And by "adding machine tape," are you referring to the portion of the document in white that states "60 Blossom Way price per acre?"
Yes.
Q And is that your handwriting on the adding machine tape?
Yes.
Q Do you see on the document below the 60 Blossom Way sale there is another transaction referenced?
Yes.
Q And do you see that it states "1290 South Ocean Boulevard, price 85 million" and then under "details" it states "about eight gorgeous acres?"
Yes.

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Q Did Mr. Weisselberg ask you to incorporate a price per acre from the 1290 South Ocean Boulevard transaction into the 2019 Mar- -Lago valuation?
I don't remember.
Q Do you have an understanding as to whether Mr. Weisselberg sent you the news clipping that is on the first page of this document?
He may have.
Q Let's see if we could refresh your recollection and have some of your prior testimony put up on the screen.
Page 421 at line 12.
MR. H REN: Can you zoom out a little bit, please? nd can you scroll down a little bit more?
Q So Mr. Birney, do you see in -- we're looking at pages 421 to 422 of your prior testimony, and I ask you the following question:
So is it your understanding whether Mr. Weisselberg sent you the first photograph that we looked at or he sent you this photograph that Mr. Weisselberg provided you with the comp that you used at 60 Blossom Way and then you asked "Is the next page an e-mail from -- usually I'll include where I got the information?"
"QUESTION: We can scroll down to page four.
" NSWER: Yes, so I probably got both of those from llen Weisselberg."

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Does seeing that testimony refresh your recollection as to where you obtained this information on the document?
Not really. I have no reason to believe my prior testimony was inaccurate. I think I just said "probably got them from llen Weisselberg." What did I say before maybe?
Q I'm looking at page 422, eight to nine:
"Yes, I probably got both of those from llen Weisselberg."
It's fine we can just move on.
MR. H REN: Could you turn to page 12 of the document, please?
Q Mr. Birney, does page 12 of the document contain the same news article and note, Plaintiff's Exhibit 3030?
They appear to be the same.
Q So you did save Mr. Weisselberg's note and the news clipping as his note indicated you should do; right?
Probably.
Q Did you prepare the backup for the Mar- -Lago valuation in 2019?
Yes.
Q nd the note that Mr. Weisselberg sent you is contained in the backup file, isn't it?
Can you represent that this 20-page document is the -- is one PDF?

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Q It was produced as one document, yes?
Okay. Then yes.
Q ll right. Let's turn to page eight of the document, please.
Which page?
Q Page eight.
Transcript continues on following page....

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Q Mr. Birney, do you see that a title on this page from a news article states, "Former Broadway producer Terry llen Kramer's Estate Sells for the Record Breaking 105 Million in Palm Beach"?
Yes.
Q nd do you see that above the paragraph and below the photograph, there is handwriting that states, "1259 S. Ocean." Do you see that?
Yes.
Q What do you understand that handwriting to refer to?
I understand that refers to the address at this location.
Q nd there's some adding machine math on the right side of the page. Do you see what that computes?
I believe it computes in value per acre for the sale. It starts with 105 million which is indicated as the sale price and it divides it by 4.72 and I just can't seem to find where the 4.72, which I believe are acres, came from on this page.
Q Do you see that there's a note above the adding machine math that states, "For valuation purposes, we are excluding the pure vacant land (second parcel) that includes 2.1 acres because no structures."
Yes.
Q Did the substance of that note come from Mr. Weisselberg?

Probably.
Q Let's see if we can refresh your recollection and pull up page 428 of your prior testimony. Do you see page on 428, lines three to six -- excuse me, three to seven.
"Does the note here that you read about for valuation purposes for Statement of Financial Condition, does that reflect an instruction you received from llen Weisselberg?
" NSWER: I believe so. Yes."
Does that refresh your recollection as to who the substance of the note on page eight came from Mr. Weisselberg?
No, but I have no reason to doubt that it -- that it did.
Q Okay. So fair to say that there is a news article that describes this transaction at 1259 S. Ocean Boulevard as a record-breaking 105 million sale and the price per acre was derived by excluding portions of the acreage from the price per acre?
That's what the note says. I can't verify the math of it right now.
Q Did llen Weisselberg direct you to use the comparable properties that were used to value Mar- -Lago in the 2019 Statement of Financial Condition?
Yes.
Q Did anyone at the Trump Organization between 2015 and

2021 ever make you aware of any appraisal that appraised rent-stabilized units at Trump Park venue?
Can you please repeat the question?
MR. H REN: Can I have a readback, please.
THE COURT: Please. Thank you.
(Whereupon, the requested portion of the record was read back.)
I don't think so.
Q Okay. Mr. Birney, let's move on to the topic of Mr. Trump's partnerships with the Vornado Realty Trust. I would like to pull up Plaintiff's Exhibit 856, 2020 Statement of Financial Condition, and turn to page 20, please.
Sorry. Wrong page. Scroll up, please. There. One more page.
Mr. Birney, do you see where it states that, "Mr. Trump and Vornado Realty Trust are partners in two properties? I'll just read from the document. It states, "In May 2007, Mr. Trump and Vornado Realty Trust became partners in two properties." Do you see that?
Yes.
Q nd do you see three paragraphs down where it states, "Mr. Trump owns 30 percent of these properties as a limited partner"?
Yes.
Q I'd like to advise you that in this litigation,

defendants do not dispute the following fact: "Mr. Trump's limited partnership interests are held through a series of entities named Hudson Waterfront ssociates with substantially similar terms."
nd I would like to mark or pull up Plaintiff's Exhibit 1213.
Mr. Birney, do you see on the first page of this exhibit, there is an e-mail with the subject "RE: Vornado?
Yes.
Q Do you see that substance of the e-mail from Maria Lagani to Ivanka Trump, llen Weisselberg and lan Garten states, "Hi, Ivanka. ttached are the Decision on Motion, the ppellate Decision and greement of Partnership - this is one of six identical agreements." Do you see that?
Yes.
Q Let's turn to page two of the document. It is a 106-page document entitled, " greement of Limited Partnership of Hudson Waterfront ssociates I, LP."
During your work at the Trump Organization, did anyone ever show you any of the agreements governing Mr. Trump's partnerships with the Vornado Realty Trust?
I don't believe so.
Q During your work at the Trump Organization, were you ever provided a summary of any partnership agreement governing Mr. Trump's partnerships with Vornado Realty Trust?

I don't believe so.
Q Mr. Birney, do you generally recall testimony yesterday regarding Mr. Trump's triplex apartment?
Yes.
MR. H REN: Let's call up Plaintiff's Exhibit 1196, please. It is a native file and I'll state that the file name is "1-jeffsupportingdata6.2017vpb10.05.17.xlsx."
What does that file name indicate based on your file saving practices?
Can you repeat the file name, please?
Q Sure. "1-jeffsupportingdata6.2017vpb10.05.17"?
That's typically how I save documents. I'll save it in the file name as of the date that I'm working on it. So I would understand that to be the file that I worked on on October 5, 2017.
MR. H REN: Can we scroll down to row 913, column G and H. nd just I neglected to say the magic words on Exhibit 1213, so if we could move that into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1213.)
Q Mr. Birney, do you have --
MR. ROBERT: Objection. I just looked at the screen. I thought he was trying to move this in. There is no foundation as to 1213. The witness never saw this

agreement before.
MR. H REN: It is a document produced from Trump Organization files with Mr. Trump's signature at the end of the agreement. Those issues are already in the summary judgment record as well.
MR. ROBERT: Not through this witness. I'm not disagreeing this appears to be the agreement, but not through this witness. He hasn't identified the document.
THE COURT: Well, I don't think you have to introduce an exhibit through a particular witness. I think you can just move that be admitted into evidence based on what has happened in the past or what is obvious or known about the exhibit.
MR. ROBERT: We're not disputing -- are you asking any more questions of this witness of this document? I guess that's my bigger issue since he doesn't know the document.
MR. H REN: I don't plan to ask him any more questions about the agreement.
THE COURT: Withdrawn.
Q Mr. Birney, looking at the --
MR. MER: Just for the record, it is admitted, right?
THE COURT: Yes, admitted. You people are so careful.
MR. H REN: We were already admonished about the

magic words.
Q Looking at Exhibit 1196 that is on the screen, do you see the information in row 913?
Yes.
Q nd what do you understand is contained in columns B and C and G and H in that row?
description for the valuation of the Trump Tower triplex for these two years that we're looking at.
Q So this is a draft of the supporting data for 2017 and as of the date of this document, the 30,000 square-foot number is still used, correct?
Yes.
MR. H REN: ll right. Let's call up Plaintiff's Exhibit 1198. This is another native file.
Q Sir, Mr. Birney, the file name on this document is "1-sofcsupportingdata6.2017vpb10.06.17".
What does that file name indicate to you based on your practices?
It indicates that it is a draft from the next day.
Q nd by the next day, you mean October 6, 2017?
Yes.
Q Let's scroll down to rows 939 through 941, please.
MR. H REN: Your Honor, I neglected to say the magic words about Exhibit 1196, the native file just before this one, so I move that into evidence.

THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1196.)
MR. H REN: Since this one is on the screen as well, can I move this one into evidence, Exhibit 1198?
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1198.)
Q So, Mr. Birney, looking at rows 939 through 942, can you describe what is reflected there?
Can you scroll up a couple of rows, please, so we can get a year on these columns?
Q Sure. Just scroll up until we see what year column G reflects.
Okay. Thank you. So row 939 I think is the same thing we just looked at, which indicates the valuation for 2016 for the triplex apartment. nd then 941 and 942 are new for 2017, but indicate the triplex was valued based on a comp at 432 Park for 10,996 square feet at $10,625 per square-foot. D 941 is probably just a calculation of those two, a multiplication of those two figures. nd then 942 line 942 indicates there is a 35 percent premium for ex-president's house. I would imagine D 942 is some sort of formula that multiplies D 941 times 35 percent.
Q nd then going down to row 950, beginning at -- in

column D, there's a question written there, "35 percent premium ex-president, question mark, would give 27 million." Do you see that?
Yes.
Q What does that language with the yellow highlighter that fills those cells indicate to you?
Can you please scroll down just a couple of rows? Thank you. That indicates an internal note that probably multiplies rows -- sorry, G950, the sum of G950 all the way down to G966 and multiplies that sum by 35 percent probably equals 27 million.
Q nd is the general idea that applying a 35 percent ex-president premium to those property values would yield an extra 27 million in value?
If that's how I read it? If you want to pull up a calculator, we can do that.
Q I just want to get your understanding. Is that your understanding?
That is my understanding.
Q Was applying a president premium to a series of assets in the supporting data something you would have done on your own without being directed to do so?
No.
Q Who directed you?
I don't really remember, but probably llen

Weisselberg.
MR. H REN: Let's pull up Plaintiff's Exhibit 1200.
Q Mr. Birney, do you recognize this document as a draft supporting spreadsheet for the 2017 Statement of Financial Condition?
Yes.
MR. H REN: I move this document in evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1200.)
Q Mr. Birney, the file name is "1-sofcsupporting data6.2017vpb10.10.17." What does that file name indicate to you based on your practices?
It indicates that I saved this draft on October 10, 2017.
Q Okay. Thank you.
Do you have an understanding of the information contained in column C and D, row 959?
Yes.
Q What's your understanding?
25 percent premium for presidential personal residence and D is probably a calculation. That's 25 percent of D958.
Q nd the result of the calculation is 29,209,161?
Yes.
Q nd can you describe what's happening in row 968?

Yes.
Q Please do.
15 percent premium for presidential property is applied to the figure in G967.
Q What's the result of the calculation?
1,759,500.
Q Same question for row 970. If you can just describe what's happening and give the result of the calculation, that would be helpful.
15 percent premium for presidential property was applied to the figure in G 969 resulting in a number of 500,250.
Q Row 977?
15 percent premium for presidential property applied to the figure in G976 resulting in 5,310,000.
Q Row 982?
15 percent premium for presidential property applied to the figure in G981 resulting in 2,250,000.
Q nd 986?
15 percent premium for presidential property applied to the figure in G985 resulting in 133,125.
Q 990?
15 percent premium for presidential property applied to the figure in G989 resulting in 83,438.
Q nd then the last -- ^ I apologize for the 2 row 234.
15 percent premium for presidential winter residence

likely applied to the figure in G233 resulting in 86,514,586.
Q nd 311?
15 percent premium for presidential summer residence likely applied to G310 resulting in 18,920,541.
MR. H REN: For the record, the amounts that Mr. Birney read as presidential premiums sum to $144,680,601 and as in other instances, if the Court could take judicial of the math to a calculation.
THE COURT: I'll accept --
MR. ROBERT: I never speak about math numbers, Your Honor, so --
THE COURT: If we were good at math, we would have been accountants.
MR. ROBERT: Exactly.
THE COURT: It's accepted subject to any objection of recalculation. I know the defendant's lawyers are just as careful as you are. So they're going to look, check it.
MR. ROBERT: Thank you.
Q Now, Mr. Birney if you look at the bottom of this exhibit down at cell M1004, do you have an understanding of what is -- actually, can you just describe row 1004 from column J over to column M?
It appears to be a subtotal of the assets in 2016 and then a difference calculation both in percentage and dollars.
Q difference between what and what?

Between 2017 and 2016.
Q So the -- so I understand, the figure at M1004 of 125,050,000 in parenthesis, does that mean according to this draft of the spreadsheet, the asset values were down by $125,050,000 as compared to what was in the 2016 spreadsheet?
Yes.
Q So removing 144 million plus in presidential premiums would make the number negative 269 million?
Yes.
Q nd then looking at cell M1014, can you describe can you describe the information in row 1014 between columns J and M?
Similar to the above, but this is for net worth comparing 2016 total to the taking the difference both in percentage and dollars from the 2017 figure.
Q Just so I understand, cell M1014 where it says 24,360,000, does that mean that comparing this draft of the supporting data spreadsheet for 2017 to the 2016 Statement of Financial Condition, the difference is that net worth is higher by 24,360,000?
Yes.
Q So removing 144 million in presidential premiums would push that number into negative territory?
Yes.
MR. H REN: Let's go to Plaintiff's Exhibit 1212.

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Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
spreadsheet tracking changes made between at least two different versions of the supporting data spreadsheet.
Q Did you prepare this document?
Yes.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1212.)
Q The cell where it states "Statement of Financial Condition changes," what does that refer to?
Changes to the Statement of Financial Condition.
Q nd where it says, "10.26.13," is that an indication that these are changes made as of the draft of that date?
It indicates that this version of this spreadsheet was on October 26, 2017.
Q Did you typically keep documents entitled, "Statement of Financial Condition changes"?
There are probably multiple drafts of this.
Q Did you have a practice of keeping documents with the title, "Statement of Financial Condition changes." That's my question.
I think so.

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Q nd what was the purpose of the Statement of Financial Condition changes documents that you prepared?
The purpose was to summarize changes between drafts of the Statement of Financial Condition without having to scroll through a 30-page spreadsheet.
Q So in other words, you could use the "Statement of Financial Condition changes" document to tell someone else what the changes were without walking them through the thousand-row spreadsheet?
MR. ROBERT: Objection.
THE COURT: Leading. Sustained.
Q Can you provide your understanding, if you have one, of the information contained in cells I4 and K4?
My understanding?
Q Yes.
My understanding are those are the net worth for the 2017 net worth as of the draft for October 10, 2017 and that's probably the 2016 net worth like the final one.
Q nd when you said as of October 10th, is that a reference to cell B4?
Yes.
Q Okay. nd then can you describe what is contained in cells L4 and M4?
Yes.
Q Please do.

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It's a -- it's a difference calculation both in percentage and dollars between I5 and K5. Sorry. I -- I4 and K4.
Q Meaning the net worth as of the October 10, 2017 draft and the net worth from 2016?
Yes.
Q Could you scroll down to row 39, please. Can you explain row 39 and how it relates to row 4?
Yes. Row 39 is the net worth from an October 26, 2017 draft of supporting spreadsheet, so it is just a later draft.
Q nd is the -- is row 39 reflective of the information that's described between row 4 and row 39?
Can you please repeat the question?
Q Sure. Let's do it a different way.
MR. H REN: Could we zoom out a little bit.
Q So Mr. Birney, do you see that there is information in columns B and C such as row 20 and 21 where it states, "Trump Park venue reduction in PH 20 per contract with IT."
Do you have an understanding of what that refers to?
Yes.
Q nd what does that refer to?
The value of penthouse 20 at 502 Park venue was reduced by 18.7 million because Ivanka Trump has a lease with a purchase option in that lease that was $18.7 million less than the sponsor unit analysis report we received.

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(Continued on the next page.)

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Q nd does the fact that that information is contained in Rows B and C and then there is a numerical difference in Column E indicate that the change was made between October 10th and October 26th?
Yes.
Q So the items listed from Row 7 down to Row 36, those are changes to the SOFC made between October 10th and October 26th?
Yes.
Q nd so then going back to Row 39, can you describe -- well, is it fair that those numbers in Row 39 reflected the product of the changes made between Rows 6 and 36?
Yes.
Q ll right. Do you have an understanding of the information in Row 36?
Yes.
Q What's your understanding?
That 144.7 million was reduced from the Statement of Financial Condition for the premium celebrity status.
Q nd the number in Column E in Row 36 is 144,680,600?
Yes.
Q The number that is $1 off from the sum of the presidential premiums in the earlier spreadsheet?
I don't remember the sum that you stated before.
Q It was 144,680,601?

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Okay.
Q So did you have an understanding as of October 26, 2017 that the presidential premiums were to come out of the Statement of Financial Condition for that year?
Can you repeat the question, please?
MR. H REN: Sure. Could I have a read back?
THE COURT: Please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
I had an understanding that they were taken out as of October 26, 2017.
Q nd then looking at Rows 23 and 24, do you see in Row B it states, "1290 venue?"
Yes.
Q What does that refer to?
The commercial office building located at 1290 venue of the mericas.
Q nd that's part of the Vornado Partnership Interest that we discussed earlier; right?
Yes.
Q Do you have an understanding of the numerical figure in Cell E 24?
Yes.
Q nd what is your understanding?
My understanding is that is the increase in value that

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was obtained by increasing the EBITD by free rent and reduction of the straight line rent.
Q So as of October 26, 2017, the value of a penthouse at Trump Park venue was reduced, presidential premiums were removed by 267.8 million, was added to the 1290 venue of the mericas' valuation?
Yes.
THE COURT: Five-minute warning.
Q Let's call up Plaintiff's Exhibit 3034.
MR. H REN: Your Honor, this is actually a pretty good time if you want to do it earlier.
THE COURT: Yes, sure. Within that five minutes you have discretion.
I think we have a question or a comment here. llison?
MS. GREENFIELD: Okay. I just wanted to go back and clarify on the deposition designations. You are correct. There was a mistake in the court --
Mr. Kise, you are correct there is a mistake in the court e-mail. So the only part of that designation that is inadmissible is the part that plaintiff objected to which is page 120, line 21 to page 122, line 22.
MR. KISE: No, 103. I have 103, lines 12 to 18.
MS. GREENFIELD: That's admissible. So if the e-mail said otherwise --

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MR. KISE: It is admissible?
MS. GREENFIELD: It is admissible. The only thing inadmissible is 120, line 21 to 122, line 22.
MR. KISE: Hold on. I don't think I have that. That may not be an issue at all. Let me just --
MS. GREENFIELD: Okay.
MR. KISE: But I'll come back to you if it is. So then the ten pages is in and the 120 just make sure I have it. Yes, okay. Understood. Thank you.
THE COURT: We went over those pretty carefully. I'm careful, too, you see.
(Whereupon, there is a recess in the proceedings.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
THE COURT: Mr. Kise?
MR. KISE: I just want to put on the record. So just so I'm clear, so you're reversing the ruling from yesterday that said that that testimony was admissible, right? Because yesterday's ruling said pages 1, lines 25 through 136, line 23 was admissible. That would include 120, line 21 through 122, line 22, so.
MS. GREENFIELD: Yes, that's correct. That was a mistake in the e-mail. So the ruling from -- the only thing that's inadmissible out of everything that was submitted was what was relayed right before the break. Everything else

that was submitted or designated is admissible with the exception of those lines I read right before the break and the things that were withdrawn I think there is still agreement there?

THE COURT: I'll assume if they withdraw them you haven't said anything.

MR. MER: They're withdrawn.

MR. KISE: But I don't -- I guess we'll have to come back to you. I haven't had a chance over the break to look at it. I don't see any distinction between the testimony that was excluded and the rest of the testimony and all of it relates to the same thing which is this witness's understanding of her own notes and just like we're doing with this witness here asking him question after question after question.

In fact, it's a little different here because we're asking him questions that aren't in his notes. We're just asking him what's his understanding, so that testimony was designed to get at this witness's understanding of what she wrote in her own notes, but I can do this in a more detailed way if -- I don't want to take up the time while we have a witness.

THE COURT: Right. So this is now a substantive disagreement, not a correction?

MR. KISE: Yes, Your Honor. Because yesterday we

had just taken that ruling is including all of that, but I just don't see a distinction between -- I can come back to you on that.

THE COURT: Okay. We'll address it.

MR. KISE: Okay. Thank you.

MR. SOLOMON: Your Honor?

THE COURT: Yes, I remember looking at that carefully since that was the exception. There was a compound question or questions. There was no reason to believe that that particular witness would know the answer. These witnesses try to -- if you didn't object or I let it in anyway, there was a reason to believe that they wouldn't be able to answer.

MR. KISE: No reason to believe that the witness wouldn't understand her own notes? The question relates to her own notes, so there is certainly a reason to believe that she would understand her own notes. We could ask her a question. If she says I don't know, then she says I don't know. But if we're asking her about what is in her own notes and the basis for what's in her own notes, then she can either say I don't know what I looked at or I don't know why I wrote that or I don't know or any other combination or she can explain it.

THE COURT: I totally agree with everything you just said.

Now let's hear what the G has to say.

MR. SOLOMON: Your Honor, I'm not arguing the merits of this. The Court has already addressed that.

THE COURT: Well, I addressed it, but not as a continuing objection, which we'll have to hash out.

MR. SOLOMON: But one thing I did want to raise, Your Honor, is this may affect the ability to have the video properly edited for Monday.

THE COURT: Yes, so we'll finish it today.

MR. KISE: Either today or we can get it to you over the weekend.

THE COURT: There is no reason not to do it today.

MR. KISE: I just don't know if we have -- I'll have to go back and see if we have all the transcript materials.

THE COURT: It can't be that complicated if it's the way you said, then --

MR. KISE: It seems very simple to me. It's not. pparently it is more complicated which is why we have to address it, but I certainly don't think in a -- particularly in a bench trial, issues relative to minor nits and questions, it's a bench trial. There is no risk of confusion of a jury. So you can certainly sort out what you think is relevant or not relevant, but to exclude it altogether when this witness isn't even available to us at

this point is a big step. That's why I'm making such an issue of it.

MR. SOLOMON: Your Honor, Mr. mer will deal with the merits of the issue.

MR. MER: Well, only to say I don't have the transcript in front of me.

THE COURT: Is your microphone on?

MR. MER: I don't have the transcript in front of me, so if I could just have time to look at the transcript and address Mr. Kiser's comment maybe before we break at the end of the day.

THE COURT: Or before or after lunch. I don't care. We're not coming back after lunch. Is today Friday or something?

MR. KISE: I will point out that we're talking about what amounts to about 25 lines of testimony that are important to the presentation of our defense and so for that reason alone, I mean, I don't see -- there doesn't seem to be any critical issue with the testimony itself, so I would just on that basis alone to short circuit this and make it available for them to do the video, I would ask the Court to reconsider just on that basis. It's a bench trial.

THE COURT: I am reconsidering and we'll address it, but last words quickly?

MR. MER: We'll look at the testimony and I'll get

back to you when we're done for the day with the substantive response.
THE COURT: Okay. I'm sure with all this brainpower here we can work it out somehow.
MR. KISE: Thank you.
THE COURT OFFICER: Ready for the witness, Judge?
THE COURT: Yes, thanks.
THE COURT OFFICER: Witness entering.
(Whereupon, the witness enters the courtroom and approaches the witness stand.)
THE COURT: Okay, let's continue.
Q Welcome back, Mr. Birney. I'll do my best to keep my voice up.
MR. H REN: Could we look at Plaintiff's Exhibit 3031, please?
Q Mr. Birney, do you see the document on the screen entitled "Bloomberg nalysis 5.29.18?"
Yes.
Q Did you prepare this document?
Yes.
Q What does it appear to you to be?
spreadsheet comparing certain asset, classes, requests, multiple years, and multiple reports.
Q nd the first Bloomberg nalysis, what does that refer to?

nalysis of something related to Bloomberg.
Q Is there any information communicated from Bloomberg that caused you to prepare this spreadsheet?
Probably.
Q Let's see if we can refresh your recollection.
MR. H REN: Can we pull up Plaintiff's Exhibit 3034?
nd before we do that, I'll move 3031 into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3031 in evidence.)
Q Mr. Birney, do you see the document on the screen, an e-mail from someone called Caleb Melby at Bloomberg?
Yes.
Q nd do you see that the e-mail is directed to Weisselberg@Trumporg.com?
Yes.
Q Whose e-mail address is that?
It's probably llen Weisselberg's. I know his e-mail address is Weisselberg@Trumporg.com. I don't know if that matters.
Q Okay. nd also on the "to" line is someone named manda Miller. Do you see that?

Yes.
Q Who is Ms. Miller around the time of this e-mail? Who?
Q Yes.
manda was the communications person.
Q nd also in the "to" line is lan Garten; correct?
Yes.
Q nd he was the chief legal officer?
I don't know what llan's title was in 2018.
Q The date of the e-mail is May 29, 2018 and it states: "It's that special time of year where we update the President's net worth summary for the Bloomberg billionaires index. I've been working on the update this year with Shahein cc'd."
nd then what follows below the e-mail signature is a chart of assets and valuations. Do you see that?
Yes.
Q Does that refresh your recollection as to why you may have been preparing a spreadsheet entitled "Bloomberg nalysis 5.29.18?"
The timing makes sense.
Q Does it refresh your recollection?
Not really, but I don't have a reason to doubt this e-mail in that spreadsheet are connected.
MR. H REN: Let's turn back to Exhibit 3031.
Q Did anyone direct you to prepare this document?

Probably.
Q Did llen Weisselberg direct you to prepare this document?
Probably.
Q Did Ms. Miller ask you to prepare any information in response to the Bloomberg inquiry on May 29, 2018?
I don't know.
MR. H REN: ll right. Let's move to Plaintiff's Exhibit 3033.
Q Mr. Birney, do you recognize this document?
I recognize it as an e-mail.
Q Is it a series of e-mails on which you are copied?
Yes.
MR. H REN: Move this document into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3033 in evidence.)
Q If you could turn to page two and look in the middle of the page. Do you see where Ms. Miller writes to Mr. Melby and others "thanks Caleb -- hoping you can speak with Patrick on background only and not for attribution." Do you see that?
Yes.
Q nd Mr. Melby follows further up on page two stating "happy to talk to Patrick right now." Do you see that?

Yes.
Q nd then on page one of the exhibit, Ms. Miller writes to Mr. Melby, "We will give you a ring in about ten minutes." nd Mr. Melby responds, "Let's do it." Do you see that?
Yes.
Q nd then at the very top of page one, Mr. Melby writes: "Thanks again for the call. My editor is wondering when we'll get comment." Do you see that?
Yes.
Q Did you have a call with Ms. Miller and Mr. Melby on the afternoon of May 30, 2018?
I had a call with Ms. Miller and Bloomberg. I don't know or remember the date. It probably was on May 30th, yes.
Q Can you describe your role in that call?
Yes.
Q Please do.
I think I just discussed Bloomberg's valuations and I don't really remember the main points of the call. I think they had something to do with they use of the citywide cap rate. I remember that. Points from the spreadsheet that I prepared were probably discussed.
MR. H REN: ll right. Let's move to Plaintiff's Exhibit 3028.
Q Mr. Birney, do you see on this exhibit that the subject is "Bloomberg 5.30.18?"

Yes.
Q nd there is a sent time of "May 30, 2018 at 2:38 p.m.?"
Yes.
Q nd in the "from" field there is a lot of what I'll just describe as Internet gobbledygook, for lack of a better description, but in the middle of all that it says, "P. Birney" on the right side on the top line? Do you see that?
Yes.
Q Did you prepare this document?
It appears, yes.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3028 in evidence.)
MR. ROBERT: Just for the fact I guess it's a -- something that the witness attributes to himself because I can't tell who it's sent to. It just says "from." So is this an e-mail or it's just like a memo that was done?
MR. H REN: If we can ask the witness?
MR. ROBERT: Okay.
Q Mr. Birney, you stated that you prepared this; correct?
Yes.
Q What do you understand this document to contain?

I understand it to contain talking points for the Bloomberg call.
Q nd do you sometimes prepare talking points in draft form in Outlook and not send them in an e-mail?
It's possible.
Q ll right. Just directing your attention to some of the information in the document.
Well, let me ask you first, did you work with anybody else to prepare these talking points?
Yes.
Q Who did you work with to prepare these talking points?
llen Weisselberg.
Q nd where it states at the top of the Document 4.8 indicates, " stabilized situation depending on cash flow, upside, rent roll, credit tenants, RC may be including properties that are Class but may include tenants that are of lower credit." Do you see that?
Yes.
Q What does 4.8 refer to there?
Cap rate.
Q nd did Mr. Weisselberg provide this portion of the talking points document to you?
Probably.
MR. H REN: Let's move to Plaintiff's Exhibit 3027. Excuse me, Your Honor.

(Whereupon, there is a pause in the proceedings.)
MR. H REN: Your Honor, just so I can have clarity is Exhibit 3028 in evidence now that the witness has testified that he prepared it as a set of talking points?
MR. ROBERT: No problem with that.
THE COURT: It's in evidence.
MR. H REN: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3027 in evidence.)
Q Mr. Birney, Exhibit 3027. Do you recognize it?
Yes.
Q What do you recognize it to be?
n e-mail from Michael Papagianopoulos from Cushman & Wakefield.
Q Is it to you?
The e-mail is to me, cc's Jeff McConney and two other people from Cushman & Wakefield.
MR. H REN: I move this document into evidence.
THE COURT: Was that a motion to admit it into evidence?
MR. H REN: Yes.
THE COURT: Got to keep your voice up.
Granted. It's in evidence.
(Whereupon, the item previously referred to is

received and marked Plaintiff's Exhibit Number 3027 in evidence.)

MR. H REN: Thank you.

Q Mr. Birney, I'm looking at the middle of or the bottom of page one. There is a request made to Mr. Papagianopoulos and it states: "Can you please update the attached comps for Manhattan Class . Can you send this today." Do you see that?

Yes.

Q Why did you make that request to Mr. Papagianopoulos?

Probably because it had something to do with the Bloomberg call. It was that same day.

Q nd in the e-mail from you to Mr. Papagianopoulos at 12:46 p.m., you stated, " lso confirming our conversation that 1290 venue of mericas could probably be estimated at a mid four cap rate at stabilization low four if there is upside."

Do you see that?

Yes.

Q Did Mr. Weisselberg or Mr. McConney dictate that language to you?

I don't know.

Q Let's see if we can refresh your recollection.

MR. H REN: Let's pull up on the screen some of your prior testimony at page 385.

Q nd looking at page 385, lines two through ten, you were asked: "I guess I'm asking what does it mean to have a mid

four cap rate at stabilization low four if there is upside?

" NSWER: I'm obviously referring to mean four cap rate meaning four mid or mid four percent cap rate. I don't really know what at stabilization or upside really mean."

That's your testimony?

Yes.

Q nd then let's look at 394 beginning at 920:

"QUESTION: Did somebody dictate the language to you to put in this e-mail?

" NSWER: Possibly."

It continues, "is that part of your current practice that somebody dictates e-mails for you to send out?

" NSWER: Sometimes.

"QUESTION: Who dictates messages for you to send out?

" NSWER: ny of my bosses.

"QUESTION: So that would be specifically whom?

" NSWER: I would say -- so Ron Leiberman, llen Weisselberg and Jeff McConney.

"QUESTION: nd to your recollection, did Ron Leiberman direct you to draft this particular message?

" NSWER: No.

"QUESTION: Did Jeff McConney dictate this particular message for you?

" NSWER: Maybe.

"QUESTION: Did llen Weisselberg dictate this particular message for you?

" NSWER: Maybe.

"QUESTION: Did anybody else possibly dictate this message to you?

" NSWER: Probably not. That was your testimony?

THE WITNESS: Yes.

Transcript continues on the following page....

Q Does seeing that testimony refresh your recollection as to whether anybody dictated to you the language in this e-mail which states "1290 ve of mericas could probably be estimated at mid 4 cap rate at stabilization low 4 if there is upside"?

I'm writing the e-mail to Michael from Cushman & Wakefield saying, "Confirming our conversation," so I could have written that down based on a phone call or it could have been told to me by -- or dictated to me by llen Weisselberg or Jeff McConney.

Q By the time you sent the e-mail, you didn't know what at stabilization or upside really meant?

Correct.

Q Looking back at Exhibit 3027, the e-mail on May 30, 2018 at 12:46 p.m., you copied Jeff McConney on the e-mail. Why was he copied on the e-mail? I'll ask it in a more specific way.

Was Mr. McConney assisting you in gathering market information to respond to the Bloomberg inquiry?

Yes.

Q In Exhibit 3027, at the top of page one, there is a response from Mr. Papagianopoulos that states, "While I cannot opine on 1290 O , as I do not know the actual financials, current market environment for class MT properties is mid 4s", that's the number four with an "S", "for stabilized and below that for properties with upside." Do you see that?

Yes.
Q What do you understand MT to refer to there?
I understand it to be midtown.
MR. H REN: Let's move to Plaintiff's Exhibit 1159.
Q Mr. Birney, in Exhibit 1159, do you see on the first page an e-mail from you to Mr. Papagianopoulos stating in part, "I need both the midtown and downtown sales for an urgent matter." Do you see that?
Yes.
Q What was the urgent matter?
I have to believe it was the Bloomberg article/phone call.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1159.)
Q Mr. Birney, do you see on page two of the document, we have the same two e-mails that indicate an exchange with Mr. Papagianopoulos about a mid 4 cap rate at stabilization that we looked at a minute ago?
Yes.
Q nd on page one of this exhibit, you forwarded the e-mail chain to llen Weisselberg. Do you see that?
Yes.
MR. H REN: Let's pull up the 2018 supporting data

spreadsheet Plaintiff's Exhibit 774. Could we go to cells C832 and 833.
Q So, Mr. Birney, does the information in cells C832 and C833 pertain to the 2018 valuation of 1290 venue of the mericas?
Yes.
Q nd do you see that it states, "06/30/2018-based on information provided by Michael Papagianopoulos of Cushman & Wakefield which reflects a cap rate for 2.67 percent for a comparable office building"?
Yes.
Q nd that's the same Michael Papagianopoulos whose name we saw from the e-mails from May 30, 2018?
Yes.
MR. H REN: Let's pull up the 2018 Statement of Financial Condition, Plaintiff's Exhibit 773 and go to page 19, please.
Q Mr. Birney, do you see the heading, "partnerships and joint ventures"?
Yes.
Q In the paragraph beginning with -- scroll down, please. In the paragraph beginning with "the estimated current value," do you see where it states, "This valuation was arrived at by applying a capitalization rate to the stabilized net operating income and taking into consideration any debt."

Yes.
Q nd does it state the estimated current value of the real property net of debt of 1,211,900,000 is based on an evaluation made by the trustees in conjunction with their associates and outside professionals?
Yes.
Q Did Jeff McConney or llen Weisselberg ever direct you to use a capitalization rate in the mid 4 percent range in the 2018 valuation of 1290 venue of the mericas based on the properties stabilized net operating income?
Can you please repeat the question?
THE COURT: Read back, please.
(Whereupon, the requested portion of the record was read back.)
THE COURT: That is a mouthful by the way. If you can make the questions a little shorter and simpler and maybe more direct.
No.
Q If either of them had given you such a direction, would you have followed it?
Probably.
MR. H REN: Let's pull up Plaintiff's Exhibit 781, please.
Q Mr. Birney, do you recognize this document?
Yes.

Q What do you recognize it to be?
I recognize it to be the backup to the 1290 venue of the mericas valuation -- I can't really tell the year.
Q Do you see that it has in the left-hand column on the first page actual fourth quarter 2017 results?
Yes.
Q Does that indicate to you that it is the backup for the 2018 valuation?
Probably, yes.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 773.)
Q nd Mr. Birney, when it says "1290" in handwriting at the top of the first page, does that refer to 1290 venue of the mericas?
Yes.
Q ll right. What do you understand to be shown on page eight of this document?
This is a list of recent sales at that time for midtown Class buildings.
Q Is it a portion of a generic report of sales from Cushman & Wakefield?
I can't tell who it's from.
Q But that appears to you to be a generic list of sales?

Yes.
Q ll right. There is a sale that is highlighted 666 Fifth venue. Do you see that?
Yes.
Q nd is that your highlighting?
Probably.
Q nd what is indicated by the fact that 2.67 percent is highlighted?
That is the capitalization rate that was used.
Q Do you see in the entry next to transaction type it states "contract."
Yes.
Q You understand that -- do you understand that to mean the transaction is not closed, but it is in contract?
I do.
Q ll right.
MR. H REN: Could we scroll down, please, to the paragraph below the numbers.
Q Do you see at the bottom of the paragraph it states, "If the sale occurs, the property would be purchased on an overall capitalization rate of 2.67 percent. The stabilized capitalization rate is projected to increase to 4.45 percent in year 3."
Yes.
Q Were you ever directed to use the 4.45 percent rate

rather than the 2.67 percent rate in valuing 1290 venue of the mericas in 2018?
No.
MR. H REN: Let's move to Plaintiff's Exhibit 842, the 2019 Statement of Financial Condition and turn to page 19.
Q Mr. Birney, do you see the heading "partnerships and joint ventures"?
Yes.
Q In the paragraph beginning with, "The estimated current value," do you see that it states, "This valuation was arrived at by applying a capitalization rate to the stabilized net operating income and taking into consideration any debt"?
Yes.
MR. H REN: Let's move to the supporting data Plaintiff's Exhibit 843 and turn to cells G834 to 835.
Q Mr. Birney, do you see in cell G835 there is a reference to a 2.67 percent cap rate?
Yes.
Q nd then looking over at cells G or C863 to 864, do you see that it states, "06/30/2019-1290 based on information provided by Michael Papagianopoulos of Cushman & Wakefield which reflects a cap rate of 2.67 percent for a comparable office building." You see that?
Yes.

MR. H REN: Let's move to Plaintiff's Exhibit 850.
Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
The backup to the 1290 venue of the mericas 2019 asset valuation.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 850.)
Q Mr. Birney, could you look at page five of the document, please.
MR. H REN: Could you zoom in for the entry for sale number one with the highlighter.
Q Mr. Birney, you see where the 2.67 percent capitalization rate is highlighted?
Yes.
Q What is indicated by that?
Capitalization rate of 2.67 was used.
Q nd were you ever --
MR. H REN: Scroll down, please, to the paragraph below.
Q Do you see at the bottom of the paragraph, it states, "The property was purchased based on an overall capitalization rate of 2.67 percent which is projected to increase to

4.45 percent upon stabilization in year 3?"
Yes.
Q Were you ever directed to use the 4.45 percent number instead of the 2.67 percent number?
No.
MR. H REN: Can we zoom out to see more of the exhibit, please.
Q Do you see in pages five through seven of the exhibit there are some entries identified by handwritten notes such as east, west, south and too small?
No.
Q So do you see on page five that there are notations in handwriting that state east, west, east. Do you see those?
Yes.
Q nd then on page six, do you see that there are additional notations such as south, east, west and too small?
Yes.
Q re those entries in your handwriting?
Yes.
Q nd what do those notations indicate?
They indicate why these properties weren't used.
Q Whose decision was it not to use the properties identified by those notations?
llen Weisselberg.
Q We're going to move on to Trump Tower and go back to

the 2018 supporting data Exhibit 774. Let's look at rows 36 to 49, please.

Mr. Birney, just speaking generally, can you describe the information in column C from rows 32 to 42?

Columns B and C?

Q Yes. Sorry.

Yes.

Q Please, go ahead.

It's a calculation of the net operating income and the different line items of description for that calculation.

Q nd so there's an income number in row 32 and then there are adjustments made below that; is that right?

Yes.

Q nd looking at cell H47, what's conveyed there?

I couldn't really hear you.

Q H47.

THE COURT: You mean line 47, don't you?

MR. H REN: Right, line 47, and the number that is contained in cell H47.

Sorry. I couldn't really hear the question. What's the question?

Q What is conveyed there?

Cap rate used in 2018 for Trump Tower of 2.86 percent.

Q nd do you see the -- if you look at cell C81 to 83, there's a notation that states, "06/30/2018 based on information

provided by Michael Papagianopoulos of Cushman & Wakefield which reflect cap rates for comparable office buildings of 2.67 percent and 3.05 percent for an average cap rate of 2.86 percent"?

Yes.

MR. H REN: Let's pull up Plaintiff's Exhibit 776, please.

Q Mr. Birney, do you recognize this document?

Yes.

Q What do you recognize it to be?

The backup for the Trump Tower valuation in 2018.

MR. H REN: I move this document into evidence.

THE COURT: ll right. Granted. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 776.)

Q Mr. Birney, on the first page, there is a figure of $1,009,488 on the line for "management fees." Do you see that?

Yes.

Q What does it mean there that the figure is circled?

Probably means it was removed in the calculation -- oh, I'm sorry. The -- one second. Yes. It was removed from the calculation.

Q So management fees were removed from expenses when calculating net operating income?

Can you repeat the question?

Q So management fees were removed from expenses when calculating net operating income?

Yes.

Q nd whose decision was it to remove management fees from the expenses when calculating the net operating income of Trump Tower?

Either Jeff McConney or llen Weisselberg.

Q If you take a look at page nine, do you see an e-mail from Doug Larson at Newmark Knight Frank?

Yes.

Q It is dated July 29, 2018 and the only person on the "to" line is Doug Larson. Do you see that?

I do.

Q So did you have an understanding of, I guess, e-mail culture that when a person sends an e-mail to themselves and it ends up as you can see from the next e-mail of Jeff McConney that it was a broad e-mail blast?

General understanding, yes.

Q ll right. nd then Mr. McConney forwards that e-mail to you as you can see at the top of the page nine. Do you see that?

Yes.

Q He states in his e-mail to you, "Does this answer number three on the Statement of Financial Condition needs

list"?

Do you have an understanding of what "Statements of Financial Condition needs list" refers to?

Yes.

Q nd what does it refer to?

I think it refers to an e-mail that I sent this year listing out the things that I needed in order to put together the Statement of Financial Condition.

Q nd Mr. McConney was assisting you for gathering things for the Statement of Financial Condition needs list?

Yes.

Q Turning to page seven of the document, do you see the adding machine math in the middle of the page?

Yes.

Q nd what do you understand it to convey?

n average cap rate from 666 Fifth venue and 693 Fifth venue.

Q nd looking at the entry on the page for 666 Fifth venue, do you see at the bottom of the paragraph entry the same reference to a stabilized capitalization rate of 4.45 percent that we saw in the similar report in the backup for the 1290 valuation?

Yes.

Q Were you ever directed to use the 4.45 percent number rather than the 2.67 percent number in the 2018 Trump Tower

valuation?
No.
Q Let's move to Plaintiff's Exhibit 1100. So it is a long document. I can assure you we're going to go through only a very small amount of it.
Mr. Birney, do you see at the top of the first page an e-mail from Jeff McConney to you stating, "Does this answer number three on the Statement of Financial Condition needs list"?
Yes.
Q nd do you see that the attachments to the e-mail include file names such as "nycofficemarketoverview.pdf," "officebuildingsales.pdf," "officemarketoverview.xlsx" and then there are several others?
Yes.
Q Do you recognize this e-mail that Mr. McConney sent to you?
I recognize it as an e-mail, yes.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1100.)
Q I'd like to turn to page 39 of the exhibit. So in the packet of material that's contained in Exhibit 1100, you can see on this page sale number one, 666 Fifth venue. nd then on

page 42 of the exhibit, sale number 14, 693 Fifth venue. nd I'll, for the sake of time, just indicate to you that there are 24 different sales reflected in this generic report and that many of them have capitalization rates higher than four percent.
My question for you is just did you decide -- were you the person who decided not to use any properties other than 666 Fifth venue and 693 Fifth venue as comparable to Trump Tower for the 2018 Statement of Financial Condition?
No.
(Continued on the next page.)

Q Let's move to the next year.
The Supporting Data for 2019, Plaintiff's Exhibit 843, and specifically Rows 52 to 68.
MR. H REN: Zoom out so that more is visible.
Q Mr. Birney, do you understand Rows 52 through 68 to contain the 2019 valuation of Trump Tower?
Can you scroll up just a few rows, please? Yes.
Q nd in Cell G 66, do you see there is a cap rate identified of 2.67 percent in that valuation?
Yes.
Q nd I'll just state -- well, let's move to Plaintiff's Exhibit 842 on page four -- page six.
So, sir, you see on that page there is a description of Trump Tower that continues on to the following page? Do you see where it states, "Trump Tower continued the estimated current value of 806,700,000 is based on an valuation by the trustees in conjunction with their associates and outside professionals applying a capitalization rate to the stabilized net operating income?"
Yes.
MR. H REN: Let's move to Plaintiff's Exhibit 846.
Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
Backup to the Trump Tower valuation in 2019.

MR. H REN: I move this document into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 846 in evidence.)
Q Direct your attention just first to the first page. It states next to "$1,061,233 paid to Trump." Do you see that?
Yes.
Q nd is that management fee number removed from the calculation of net operating income?
It's removed from the operating expenses.
Q nd the operating expenses are part of the calculation of that operating income; right?
Yes.
MR. H REN: Let's move to page seven of the exhibit.
Q Do you see the highlighting on the entry for 666 Fifth venue?
Yes.
Q nd the capitalization rate of 2.67 percent is highlighted?
Yes.
Q What does that indicate to you?
That the cap rate of 2.67 was used.
Q Used in what?

The valuation of Trump Tower.
Q nd do you see the note at the bottom of the paragraph that reads "the property was purchased based on an overall capitalization rate of 2.67 percent which is projected to increase to 4.5 percent upon stabilization in year three?"
Yes.
Q Were you ever directed in connection with the valuation of Trump Tower in 2019 to use the 4.45 percent number reflected here?
No.
MR. H REN: Let's move to Plaintiff's Exhibit 1227.
Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
draft of the 2019 Statement of Financial Condition Supporting Data spreadsheet.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1227 in evidence.)
Q The file name is "1-SOFC Supporting Data 6.2019 VPD 072219.XLSX." What does that file name indicate to you based on your practices?
It indicates that this version was the draft as of

July 22, 2019.
Q nd I'd just like to direct you down to Row 65 through 67.
MR. H REN: nd can you scroll up a little bit to show the witness the property to which those entries pertain?
Q So Mr. Birney, do you see in Row 30 there is an entry, "Trump Tower?"
Yes.
MR. H REN: Okay. Now could we scroll down, please, to Row 65? There it is.
Q Mr. Birney, do you see in these entries there are two different valuations of Trump Tower that are computed?
Yes.
Q nd value one is 524 million and change?
Yes.
Q nd value two is 571 million and change?
Yes.
Q nd value one is based on a cap rate of 1.0 percent?
Yes.
Q nd value two is based on a cap rate of 3.67 percent?
Yes.
Q nd just looking down at Rows 84 through 90 and focusing first on Rows 84 to 86, do you see that the four percent number is based on an average of 4.65, 4.68 and 2.67?

Yes.
Q nd do you see that the 3.67 percent number in value two is based on an average of 4.68 and 2.67?
Yes.
Q You recall that we saw in the 2019 Supporting Data that only 2.67 percent was used in the final valuation of Trump Tower in 2019?
I think so.
Q Did you alone make the decision to use the 2.67 percent rate rather than the higher rates reflected in this exhibit?
No.
Q Did any person direct you to use only the 2.67 percent rate from the 666 Fifth venue sale for the 2019 valuation of Trump Tower?
Yes.
Q Who was that person?
llen Weisselberg.
Q Do you recall any conversation with Mr. Weisselberg in which he conveyed that instruction?
Yes.
Q What do you recall about that conversation?
I recall that I discussed it with llen Weisselberg. I think I took the position that -- I think he said just use 2.67 percent and I said -- I'm -- like, I'm fine using that cap rate, but I'm worried that if we only use 2.67 if the building

was sold, like, next year we're going to have a -- next year there might not be a cap rate that is as low as 2.67, so there would be a difference between next year and this year.
Q So you had a concern that the following year you might not still be able to support a cap rate as low as 2.67?
MR. ROBERT: Objection.
MR. H REN: Your Honor, this witness is an employee of the defendants. He's identified with an adverse party. There is a little bit of leading under the rules. I'm just trying to clarify his answer.
THE COURT: We haven't addressed the issue I don't think whether he's a hostile witness.
MR. ROBERT: He is not a hostile witness. I think it's evidence in the testimony this afternoon and this morning.
MR. H REN: I would just say that under the rules leading is permitted for an adverse party regardless of whether he's hostile, but I was just trying to clarify his answer.
THE COURT: That was the only thing I was thinking. You're just trying to clarify what he said. I'll overrule the objection on multiple grounds.
Q Mr. Birney, could you explain --
MR. H REN: ctually, the objection was overruled, so could I have a read back, please?

THE COURT: Read, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Yes.
Q nd you conveyed that concern to Mr. Weisselberg?
Yes.
Q nd he directed you nevertheless to use the 2.67 percent rate?
Yes.
Q Did that conversation occur -- where did that conversation occur?
In the restroom of Trump Tower.
Q Thank you.
MR. H REN: Let's go back to Plaintiff's Exhibit 846 and turn to page seven.
Q Do you see the handwriting under "Sale Number 11, 666 Fifth venue?"
Yes.
Q Is that your handwriting?
Yes.
Q nd it states under "666 Fifth venue," quote, "Only Plaza district sale in the last two years on Fifth venue (non-allocated)." Did I read that correctly?
Yes.
Q Did you come up with the rules of this statement alone?

No.
Q Who was involved in coming up with the words of this statement?
llen Weisselberg.
Q nd did Mr. Weisselberg come up with the phrase "nonallocated" used here?
Yes.
Q ll right. I'd like to direct your attention to page eight of the exhibit.
nd looking specifically at an entry for 711 Fifth venue in the far left side of this page, do you see an entry under the heading "contract" identified an address of 711 Fifth venue?
Yes.
Q Does the entry identify a submarket near the top below the address?
Yes.
Q What submarket does it identify?
Plaza district.
Q Does the entry identify any allocation of a sales price?
I don't know.
Q Feel free to look through it.
Can you scroll down, please?
Q Do you see --

Sorry.
Q -- an allocation identified?
I don't see anything that identifies an allocation.
Q Does the entry identify a transaction dated pril 2019?
Yes.
Q nd that was in the two years before June 2019; right?
Yes.
Q nd the Statement of Financial Condition in 2019 was finalized around October 31, 2019?
Probably.
Q Does the entry identify an overall capitalization rate?
Yes.
Q nd what does it identify as the overall capitalization rate?
Looks like 5.36.
Q nd if you look at the bottom of the paragraph do you see that it states the adjusted capitalization rate for this asset equates to approximately 4.71 percent?
Yes.
THE COURT: Five-minute warning. nd how much longer with this witness?
MR. H REN: I think he's going to have a little bit of time on Monday, but I can kind of finish up in about two minutes.
THE COURT: Okay. Mr. Birney, we'll be happy to

see you Monday, okay?
MR. H REN: I'd like to pull up Plaintiff's Exhibit 1722.
Q Mr. Birney, do you see on the screen a document stating at the top "NYC Department of Finance, Office of the City Register?"
Yes.
Q Do you see that it has a document ID and this is in the middle toward the top on the left of "20190829006040001?"
Yes.
Q nd there is a document date identified of ugust 22, 2019?
Yes.
Q nd under the heading "property data" there is an address 711 Fifth venue?
Yes.
Q nd do you see that on the bottom of page two there is a -- in all caps and bold, "recorded or filed in the Office of the City Register of the City of New York, recorded/filed 09-03-2019?"
Yes.
MR. H REN: I move this document into evidence as a public record of the transaction at 711 Fifth venue.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is

received and marked Plaintiff's Exhibit Number 1722 in evidence.)

MR. H REN: nd I could be done for the day.

THE COURT: Okay.

MR. ROBERT: Just object to the last document as to relevance, Your Honor.

THE COURT: Subject to connection?

MR. H REN: It reflects the fact that the actual sale of 711 Fifth venue occurred at the end of ugust of 2019 despite the representation and the backup about the last sale in the last two years in the Plaza district. I think its relevance is pretty clear.

THE COURT: It seems to me that it's relevant on that basis.

Okay. Counselors, don't leave.

MR. MER: Your Honor, we did have the issue of the objection.

THE COURT: Yes, but let the witness go.

See you Monday, ten o'clock. Thank you.

MR. MER: nd can we get an admonition to the witness again?

THE COURT: Mr. Birney, I hereby admonish you not to discuss the case with anybody, any aspect of the case with anybody, okay?

THE WITNESS: Okay.

THE COURT: Thank you.

(Whereupon, the witness is excused from the witness stand.)

THE COURT: We'll address the objection. We're pulling it up and look at it, see if it says what some people say it says.

MR. MER: Your Honor, if it's helpful, we can put it up on the screen.

THE COURT: That would be great.

MR. MER: nd is it okay if I present an argument on why this should be inadmissible?

THE COURT: Page 129, 21 right through 122, line 22.

MR. MER: We'll put up the third page after we -- Your Honor, the first question on page 120 starting at line 21 about how would Cushman or Newmark know something clearly lacks foundation, calls for speculation. This witness is not an employee of either Cushman or Newmark, so that question should not be allowed and the answer is inadmissible.

THE COURT: Well, let's do one at a time.

Mr. Kise?

MR. KISE: Well, Judge, I mean, I don't know that we can go one by one because his point here demonstrates the problem. It's like you have to understand the context

within which this conversation is taking place.

You're looking -- Mr. mer is asking you about one particular question, but you have to look back at the testimony, so I know that context is very difficult. We don't have a lot of witness. It's much easier when you have a lot of witnesses and you are following the testimony, but the questioning relates to her annual reviews. Those annual reviews are documents that I believe were shown to Mr. Weisselberg and what they are is -- and I can direct you to testimony that says this. You don't have to take my word, but essentially what these annual reviews are are these are Ms. Mouradian's notes that she takes in realtime and she converts it into an annual review and she says that essentially on page 123, line 17 to 22.

So the questions all relate to what she wrote. So the issue that is the subject of these particular questions is the data set that are used for valuations.

She acknowledges previously on page 117, lines 15 -- line 15 through 118, line two, that there are two sets of data that go into this and this, by the way, is reflected -- I don't have the exhibit to pull up, but this is reflected in these exhibits. There is cap rates and there is what's called NOI, net operating income, right. nd I think they went over that fully with Mr. Weisselberg.

So the questions that you're looking at, this one

in particular, is part of the sequence who provided the data. So if you look at page 118, line three and you start following until you get here, that's what all these questions relate.

So okay, where did you get the data? So we're just asking her in her notes -- she understands there is three data sets, where would this data come from. nd so the question that is presented that Mr. mer has identified here is about who would be in a better position and this is all -- by the way, this is all based on her understanding. I mean, she doesn't know. I think the answer to this question is she says I don't know.

Transcript continues on the following page....

MR. KISE: So this is all based on her understanding. We're asking her about her notes. We're asking her to explain her understanding of what's in her notes and asking her what is the source of the data, the cap rates and the NOI. If she doesn't know, then she can simply say -- which I think she does repeatedly in this context. She says, "I don't know." But I don't see that that's a basis for it to be inadmissible.

We're not asking her as an expert. We're not asking her as an employee of Newmark. She was already familiar with those two entities because she was asked about them. Cushman & Wakefield, this is page 118, lines 20 through 24:

"You mentioned that in your annual review -- you mentioned in your annual reviews companies such as Cushman & Wakefield and Newmark and counsel", meaning Mr. mer, "I believe has asked you about those as they were appraisal firms. Is that your understanding of what they were?"

nd this is now page 119:

" NSWER: That's my understanding."

So then we start asking about questions about where would this data come from and that operating income and the cap rates and the question particularly relates to -- in a series of questions relate again to her understanding of who would have that data. nd so this begins on page 120, line

21 and then continues over to page 122 where we get to the operative question after --

MR. MER: I thought we were taking these one at a time.

MR. KISE: There is no way to take them one at a time.

THE COURT: He wants to take them holistically.

MR. KISE: It is not really possible because if you take them one at a time, you're taking them in the abstract.

THE COURT: Keep going.

MR. KISE: Thank you, Your Honor. So on page 142, line two, at the top, the question is asked, "Would it be consistent with your understanding" as follows. nd this relates to who was providing the cap rates and who was providing the net operating income. So all this series of back and forth is designed to get at is where did -- what's her understanding of where the information came from, which is perfectly legitimate.

We're not asking her -- we don't need a foundation to ask her about her own notes. You don't need a foundation about why she put something in her notes. The foundation is there. It is her notes and what is her understanding. So it goes to her state of mind. We're not asking her and I don't think the question calls for an answer about what Newmark or Cushman & Wakefield actually did. She doesn't

have to be an employee and if she doesn't know, just as we've done many times in this courtroom, if she doesn't know, then she --

THE COURT: She can say she doesn't know. We have like negative three minutes. Let me just try this approach, okay. We've got a three-month trial. We have thousands, tens of thousands, hundreds -- millions of pages of documents. Is one side or the other willing to just say "big deal"?

MR. MER: So, Your Honor, I think this is important because they're trying to suggest that Ms. Mouradian misunderstood something she was told despite the fact that she took very careful notes. They could ask her about what her notes say and what the basis was for the information in her notes, but to start asking her how would Cushman or Newmark know things is inappropriate.

The next question, "Would you agree with me that the Trump Organization would be in the best position to know how much income they're generating from a particular property," there's no foundation for her to know that. How does she know if Vornado General Partnership has better or worse information?

THE COURT: Hold on one second.

MR. MER: This is important and I think the Court correctly ruled that this is inadmissible.

MR. KISE: What Mr. mer is trying to do is make your decision for you. You are the one that's going to decide whether she knew or not. We're entitled to present our evidence as to what was in her mind and present it to you and you look -- you take the evidence in and make a decision as to whether or not it's acceptable or not.

What they want you to do is just exclude it altogether and you never get to hear it and this is not a witness now who is capable of being called live, so that we can clarify things, so we can adjust our questions and answers like we've done with many witnesses in court. So there's really no basis to exclude it. There's no jury and you're perfectly capable of weighing the questions and the answers.

THE COURT: Okay. Thank you. Give me one minute or less.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Basically for the reasons that Mr. Kise has argued, I'm going to let it in. There is no jury here. I'll decide ultimately what's going on here anyway. So not to denigrate Mr. mer's argument, but it is in.

MR. MER: Your Honor, we need two minutes at the side-bar on a scheduling issue that came up within the last 45 minutes.

THE COURT: Hurry up.

(Whereupon, an off-the-record sidebar discussion was held.)

(Whereupon the trial was adjourned to October 16, 2023, at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al

P TRICK BIRNEY, M RK H WTHORN, DONN KIDDER
October 16, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

Supreme Courthouse
60 Centre Street
New York, New York
October 16, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

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THE OFFICER: ll rise. Part 37 is now in session. The Honorable rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.

THE COURT: Thank you, Tommy.

nd to the press and everyone else, the schedule for the rest of this week is somewhat up in the air as you may know. I expect to know more if not by lunchtime, more likely towards the end of the day and I will update everybody as best I can. So, okay, witness. You know there is that saying about arguing against the empty chair. Well, we have a literal as well as a figurative empty chair there.

MR. KISE: Won't be tomorrow.

THE COURT: So I hear.

THE OFFICER: Witness entering.

THE COURT: I will remind the witness as I always do that you are still under oath.

Let's continue with the direct examination of Mr. Birney.

P TRICK BIRNEY, a witness called by the Plaintiff, after having been previously sworn by the Clerk of the Court, took the witness stand and testified as follows: .

DIRECT EX MIN TION

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BY MR. H REN: (CONT'D)

Q Good morning, Mr. Birney. Thank you for being here for a third trial day in a row. Let's talk about the fixed assets approach used to value golf clubs on Mr. Trumps Statement of Financial Condition.

I would like to pull up Plaintiff's Exhibit 742. This is the 2016 statements supporting data. Can we scroll down to row 263, please.

Mr. Birney, do you have an understanding of the information contained in row 263 from column C to column H?

Yes.

Q What's your understanding?

It shows the value of the fixed assets on the balance sheet of Trump National Golf Club Florida as of June 30, 2015 and June 30, 2016.

Q Let's go down to row 280. Same question for that row.

Yes. It shows the value of fixed assets on the balance sheet of Trump National Golf Club Briarcliff Manor as of June 30, 2015 and June 30, 2016.

Q Same question for row 304.

Shows the value of fixed assets for Trump National Golf Club bed minister's of June 30, 2015 and June 30, 2016.

Q nd then do you have an understanding of the information contained in rows 320 to 321 in column H? Excuse me. 319 and 320?

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Yes.
Q What's your understanding?
It shows the value of the fixed assets on the balance sheet of Trump National Golf Club Colts Neck as of June 30, 2015 and June 30, 2016. The 2016 number was increased by 15 percent premium for a fully operational branded facility.
Q nd let's scroll down to row 339. Same question for rows 339 to 340.
Yes. It shows the value of fixed assets on the balance sheet for Trump National Golf Club Washington, D.C. as of June 30, 2015 and June 30, 2016. The 2016 figure was increased by 15 percent for a premium for fully operational branded facility.
Q nd --
THE COURT: nd I'll ask both the interrogator and interrogatee to talk louder. The interrogator just basically has to keep his voice up because his microphone is where it is. The witness -- it's a skill you have to learn how to talk into the mic while reading something, but you have to talk into the mic, so it is heard. Thank you.
THE WITNESS: Okay.
Q Same question for rows 362 to 363.
Yes. It shows the value of fixed assets on balance sheet of Trump National Golf Club Philadelphia for June 30, 2015 and June 30, 2016. The 2016 value is increased by 15 percent

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for a premium for fully operational branded facility.
MR. H REN: Just have a few more of those and I'll try to do them all for a series of years, Your Honor, just to move a little bit more quickly.
THE COURT: Great.
Q Same question for rows 382 to 383.
The rows show the value of the fixed assets for Trump National Golf Club Hudson Valley as of June 30, 2015 and as of June 30, 2016. There was a 15 percent premium added to the 2016 figure for a fully operational branded facility.
MR. H REN: nd could we scroll down to row 403, please.
Q Mr. Birney, we're looking at the entry for Trump National Golf Club L . Do you see the information in row 403 down to 405 in column H?
Yes.
Q nd what is your understanding of that information?
My understanding is that shows the value of the fixed assets as of June 30, 2016 and there's a -- for Trump National Golf Club Los ngeles and there is a 15 percent premium added for fully operational branded facility.
MR. H REN: Let's move down to row 442.
Q nd what is your understanding of the information in rows 441 to 442 in column H?
It shows the value of the fixed assets for Trump

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National Golf Club Charlotte as of June 30, 2016 and a 15 percent premium is added for a fully operational branded facility.
MR. H REN: So could we go down to row 462, please.
Q Same question for rows 462 to 463.
This shows the value of the fixed assets for Trump National Golf Club Jupiter as of 201 -- as of June 30, 2015 and June 30, 2016. 15 percent premium was added on to the 2016 number for fully operational branded facility.
Q So the general approach that we have gone through in this spreadsheet, the value of fixed assets in some cases with a 15 percent premium, was that a applied to Trump Organization golf clubs for the Statement of Financial Condition from 2016 to 2020?
It was applied to some of the Trump Organization golf clubs in 2016 and I'm pretty sure it was in '17 through '20.
MR. H REN: Okay. Let's pull up on the screen the 2020 supporting data. Just show one example.
Q So Mr. Birney, we're looking at Plaintiff's Exhibit 857 and you can see on the screen there is in row 367 to 369 in column H that reflects the same basic approach we just discussed in 2015 -- or 2016?
Yes.
Q So there was a -- I'm just trying to establish that there was a general consistency from 2016 to 2020 in terms of

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using the fixed assets and in some instances adding a premium. Is that fair to say?
Yes.
Q ll right. Do the methods of valuing golf courses on Mr. Trump's Statement of Financial Condition change in 2021?
Yes.
Q Tell us what you recall about that change.
There was a phone call with a golf course company called Marcus & Millichap where we asked them how they value golf courses and they gave us two different methods depending on how much money the golf course was making. The first method was for a golf course that consistently makes money. They used a multiple of eight to ten times EBITD for that golf course and for golf courses that do not consistently make money, they used a -- I think it was two to three times gross revenue multiplier.
Q When you say consistently make money, what do you mean by that?
The net income of the golf course positive or negative.
Q If it makes money, the negative becomes a positive?
Yes.
Q Who was on the call that you just described with the golf course company?
I was on the call, Larry Glick was on the call. I can't remember the Marcus & Millichap person's name. That's who

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I am sure of right now.
Q Okay. Let's see if we can refresh your recollection and pull up your prior testimony beginning at page 865. So, Mr. Birney, beginning at line 11, and this is your testimony:
"So then there was a call in 2021 with Marcus & Millichap. Present on our side that I can remember was myself, Ray Flores, llen Weisselberg, maybe Larry Glick where we asked them how they value golf courses."
Do you see that?
Yes.
Q Does that refresh your recollection as to who was on the call you described with Marcus & Millichap?
Yes.
Q So who was on the call with Marcus & Millichap?
Myself, Ray Flores, llen Weisselberg, the Marcus & Millichap person and Larry Glick.
Q nd if I were to say the name Steve Ekovich, would that refresh your recollection as to the name of the Marcus & Millichap person?
Yes.
Q nd what is your recollection of the name of the Marcus & Millichap person?
Steve Ekovich.
Q Thank you.
MR. H REN: Let's go to the to 21 supporting data

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spreadsheet, Plaintiff's Exhibit 1501. Could we scroll down to cell C323, please.
Q Mr. Birney, do you see in cell C323 where it states, "6/30/21-upon the advice and guidance of Marcus & Millichap, golf course industry experts, a normal golf course with a negative EBITD trades at two-three times gross revenue"?
Yes.
Q Based on your description of the call a minute ago, did the information from this cell come from Marcus & Millichap?
In that sentence, yes.
Q Thank you.
Do you have an understanding of cells G311 to 313?
Yes.
Q What's your understanding?
It shows a valuation for Trump National Golf Club Briarcliff with a gross revenue from July of 2020 through June of '21 of $7.3 million using a three times multiplier.
Q Do you have an understanding of cell G309?
Yes.
Q What is your understanding?
That is the value of the net fixed assets per Trump National Golf Club Briarcliff was of June 30, 2021.
Q What is your understanding of cell G315?
It's the average of the gross revenue multiplier and the net fixed assets.

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Q So just so I understand correctly, the $21.9 million valuation was computed by doing a gross revenue multiplier, but the result was then averaged with the $46 million fixed asset number?
Yes.
Q Back to the description of the fixed assets in cell C309, you see it says, "value of net fixed assets"?
Yes.
Q In cell H308 for the prior year, it says, "value of fixed assets." Do you have an understanding of the difference between value of fixed assets in 2020 and value of net fixed assets in 2021?
Yes.
Q What is the difference?
The difference is depreciation being removed.
Q I'm sorry. What was that?
Depreciation being removed from the fixed assets.
Q Okay. Thank you. There is some descriptions in this sheet of net fixed assets and net book value.
Would your answer be the same for those figures?
Can you repeat the question, please?
Q There are other descriptions in this sheet of the phrase net fixed assets or net book value, and I just want to know if your understanding of the word "net" in those instances is the same?

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Can you show me an example?
Q Sure.
MR. H REN: Just Ctrl-F for the word "net," "net fixed."
Q So here is an example, cell C417, the phrase "value of net fixed assets is used." But in cell C413, there is a reference to value of fixed assets is used in the prior year. I'm just trying to gain an understanding of the difference between fixed assets and net fixed assets.
The depreciation is removed from fixed assets to get to net fixed assets.
Q Okay.
MR. H REN: Search for the phrase, "net book value," please.
Q Mr. Birney, this cell C640.
MR. H REN: In cell C, if you can scroll up, so the witness can see what property this pertains to.
Q So we have cell C, B and C608 says, "Trump Turnberry." Do you see that?
Yes.
Q nd if we scroll down to cell C640, it states -- I'll just read the end of the sentence. "So we used net book value." Do you see that?
Yes.
Q Do you have an understanding of the phrase "net book

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value"?
Yes.
Q nd what is your understanding?
My understanding based on this example is it means the same thing as net fixed assets.
Q In other words, what is netted out is depreciation?
That is my understanding.
MR. H REN: Let's go to cell C357, please.
Q Do you have an understanding of the information contained in cell G356? Do you want us to scroll up?
Yes, please.
MR. H REN: Could you scroll up, please, to where the property begins.
Q So Mr. Birney, you can see cell B and C, row 343 says, "Trump National Golf Club-Bedminster."
So having seen that, do you have an understanding of the information in cell G356?
Yes.
Q What is your understanding?
My understanding is cell G356 shows the value of Trump National Golf Club Bedminster in June 30, 2021.
Q nd that value is about $80 million down from the prior year; is that right?
Yes.
Q How was the 2021 value computed?

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The EBITD was used from July 2020 through June 2021 including capital leases and was multiplied by ten. Then the receivables from members for food, dues, et cetera, and the receivables from members for refundable and/or non-refundable deposits were added to that figure.
Q nd in cell C357, it states, "6/30/21-upon the advice and guidance of Marcus & Millichap, golf course industry experts, a normal golf course with a consistently positive EBITD trades at six to eight times, but the last few purchases have been 9 to 10 times." Do you see that?
Yes.
Q nd in the valuation that we saw at cell G356, the ten times number was used; is that right?
I believe so.
Q nd that's the highest number that was reflected in the advice provided by Marcus & Millichap?
Yes.
Q Mr. Birney, take a look at cell C640. We looked at this a minute ago just to gain and understanding of the phrase "net book value," but I want to focus you on the other part of the note that reads, "6/30/21-location has not had" -- "has not consistently had a positive EBITD and resorts are not usually valued on gross revenue multipliers, so we used net book value."
What does it mean that this property "has not had consistent" -- excuse me, "has not consistently had a positive

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EBITD ?"
It means that Turnberry has not consistently had a positive EBITD .
Q nd just for a layperson who doesn't fully understand the term "EBITD ," can you explain that?
Sure. It means Earnings Before Interest Taxes Depreciation and mortization. So it is similar to net income before all those things.
Q Is it a way of conveying that the property or at least in this cell the property has not consistently had positive net income?
I would have to see the financials to confirm that.
Q So your understanding of the word "EBITD " is earnings before the other thing I said earlier, the acronym?
Yes.
Q Did you ever do a calculation of a Turnberry valuation for 2021 using a gross income multiplier?
I don't remember.
Q Did you ever discuss with anybody whether to use a gross income multiplier to value Turnberry in 2021?
Yes.
Q Tell us the substance of the discussion.
I think I discussed with Ray Flores the question, probably lan Garten.
Q Without getting into the substance of any legal advice,

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can you describe whether any calculation of valuation based on gross revenue was discussed in that conversation?
I really don't remember.
MR. H REN: ll right. Let's just pull up on the screen Plaintiff's Exhibit 2270.
Q I just want to see if that refreshes your recollection.
MR. H REN: I assure the Court we will not be going through this entire document.
Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
The income statement for Trump Turnberry.
MR. H REN: I would like to move this document into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 2270.)
Q Mr. Birney, do you see on the first page there is a line about ten lines down that says "total revenues"?
Yes.
Q Do you have an understanding of the figure in that line in the column that is entitled, "Y-T-D actual"?
Yes.
Q What's your understanding?
That is the year-to-date actual total revenue for Trump

Turnberry through December 2020.
Q The number is 6.6 million and change?
Yes.
Q nd then the next column over, what's your understanding of the 21.6 million that's reflected there?
That is the total budgeted revenue for 2020.
Q Presumably, it is a COVID year, so the revenue brought in was a lot less than the revenue expected. Is that fair?
Yes.
Q ll right. nd where it says in the next column over to the right "Y-T-D last year," in the context of this statement, does that refer to 2019?
Yes.
Q So what is your understanding of the figure in the total revenues line in that column?
The figure is the 2019 revenue.
Q So the budgeted total revenue for 2020 was 21.6. The actual revenue for 2019 was 19.5; is that fair?
Can you repeat the question?
MR. H REN: Sure. Could I have a readback, please?
THE COURT: Please.
(Whereupon, the requested portion of the record was read back.)
Yes.
Q Did you ever look at these total revenue figures in the

context of deciding whether to use a gross revenue multiplier to value Trump Turnberry for the 2021 Statement of Financial Condition?
I don't remember. It's possible.
(Continued on the next page.)

MR. H REN: Okay. Let's go back to Exhibit 1501 and could we go to Row 646, please?
Q Mr. Birney, what is your understanding of the information contained in Column G Row 646 to 648?
It shows the gross revenue from July of 2020 through June of 2021 for Trump International Golf Club Scotland using a three times multiplier.
Q So the result of a -- of a gross revenue multiplier method was 4.42 million?
Yes.
Q nd what's your understanding of Cell G 644?
The value of the net fixed assets as of June 30, 2021 for Trump International Golf Club Scotland.
Q nd the number is 32 million and change?
Yes.
Q nd what's your understanding of Row 650 in Column H?
It's the average of those two figures, the gross revenue multiplier and the net fixed assets.
Q So the gross revenue produced again at 4.42 million but it was averaged with 32 million in net fixed assets to produce the value?
Yes.
MR. H REN: Let's pull up Plaintiff's Exhibit 1356.
Q Mr. Birney, do you recognize this document?
Yes.

Q What do you recognize it to be?
spreadsheet that I created.
Q Can you describe for the Court the contents between Column B and Column O?
Sure. It lists the financial results for each golf club for various periods ultimately using the last 12 months since June of 2021. sset T 12 it means the past 12 months. It shows increases over the last two years and then it shows what multiplier may be used in Columns N and O.
Q So the figure in Columns N are those calculated values?
Yes.
Q nd are they based on the method that's then listed in Column O in the same row? Let me see if I can do it in a less generic way. So Column O Row 6 states: "10 X EBITD ." Do you see that?
Yes.
Q Is that the method that's used to compute the numbers that is in the same row in Column N?
Yes.
Q nd so just so that we can understand the nature of the document is that true all the way down in those columns to the bottom of the sheet? In other words, there is a method listed in Column O and then there is a number computed based on that number in Column N?
That appears to be with -- what's on the screen right

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now.
Q nd what circumstances led you to create this spreadsheet?
The call with Marcus & Millichap.
Q So can you just tell us the call happened and then what were the steps that you took to prepare this spreadsheet?
I gathered the income statements and balance sheets for the golf clubs for these periods and put them into the spreadsheet.
MR. H REN: I'd like to move this document into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1501 in evidence.)
Q I want to focus your attention on Columns Q through U. Do you have an understanding of the phrase "net book value" in Q3?
Yes.
Q nd what is your understanding?
That is the net fixed assets on the balance sheet.
Q nd by "net" you mean taking out depreciation as you said earlier?
I believe so.
Q nd then in Column S it says "gross book value" in Cell

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S3. Do you have an understanding of what that refers to?
Yes.
Q nd what's your understanding?
The total fixed assets for that period.
Q nd why is it gross as opposed to net?
Because it does not include depreciation.
Q nd do you have an understanding of Cell U 3?
Yes.
Q nd what is your understanding?
That is the method that was used in the past, however many years using the total fixed assets with a 15 percent premium added onto the light blue cells.
Q nd because it says "gross book value," does that mean depreciation was not removed or the 15 percent was added?
Yes.
MR. H REN: I'd like to scroll down a little bit more, please. nd I think you'll have to spread Column Q out and Column S out to see the numbers on the bottom.
Q So Mr. Birney, we're looking at Row 48 Columns N through U. I just want to see if I understand these figures correct. So figure in Column U 48, that's a total of what the gross book value with 15 percent method yields?
Yes, it says some of the cells above in that column.
Q nd just to get a comparison between U 48 and N 48, I think you'll remember that N 48 is the number computed based on

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the various multipliers; right?
Yes.
Q nd so comparing Cell N 48 to U 48, you can see the difference of about $230 million give or take between using a gross book value with 15 percent and using revenue multipliers. Is that fair?
Revenue and EBITD multipliers, yes.
MR. H REN: ll right. Let's go to Plaintiff's Exhibit 344, please.
Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
n e-mail from myself to Caitlin Carey and Jeff McConney.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 344 in evidence.)
Q Just want to direct you to page two. Do you have an understanding of who Caitlin Carey is?
Yes.
Q nd what's your understanding of who she is?
She works -- or she worked at the time of this e-mail at Deutsche Bank.

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Q nd do you see in her e-mail of November 10, 2017 to Jeff McConney copying you, she writes: "Hi, Jeff. I have a somewhat of an annoying but necessary request. We received the covenant package while you were out, thank you Patrick, and the guarantor certificate only references endeavor. Since he also provides a guaranty for OPO as well, we would need a compliance certificate referencing this separate facility. Since covenants are the same for both loans we can combine for next year but for 2017, can you provide the separate form. We just want to make sure all the Is and Ts are dotted and crossed. Thank you."
nd you'll see following that e-mail there is a response from Mr. McConney that says: "Hi, Caitlin. No problem. Can I get it to you next week? Jeff."
nd following those exchanges there is an e-mail on the first page from you to Caitlin Carey, copies Jeff McConney stating: "Caitlin, as discussed, see attached compliance certificate for Trump Old Post Office LLC. Let us know if you need anything further. Thank you. Pat."
nd the attachment to the e-mail begins on page four of the exhibit and it pertains among other things to -- and this is in the middle of the page, guarantor's Statement of Financial Condition as of June 30, 2017. It's item number one in the first bullet. nd then on page five of the document there is a signature that says underneath the signature line, "Donald J. Trump by Donald J. Trump, Jr. as attorney in fact." Do you see

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that?
Yes.
Q Do you have an understanding of how Donald J. Trump, Jr. came to sign this document?
Not really.
Q Did you do anything to get his signature?
I don't remember.
Q nd the provision of a signed compliance certificate pertaining to Mr. Trump's Statement of Financial Condition is that something you could have sent to a bank without having your action approved by someone else?
No.
Q Whose approval would you have required to take that step?
Based on this example probably Jeff McConney.
MR. H REN: Let's pull up Plaintiff's Exhibit 1450.
Q Mr. Birney, do you see on the first page the document states: "It is a development appraisal with a date of July 14, 2017?"
Yes.
Q nd it states "Ryden," R-y-d-e-n on the bottom left side. Do you have an understanding of what Ryden is?
I think they're a company based in Scotland. I don't really know too much about what they do.
Q Do you see on page two of the document -- and this is

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in Item 1.4, second sentence, it states: " s agreed with Sarah Malone of Trump International, we have prepared appraisals that reflect a development scenario."
Yes.
Q Do you have an understanding of who Sarah Malone is?
Yes.
Q Who is Sarah Malone?
The general manager of Trump International Golf Club Scotland.
Q Is that the property located in berdeen?
Yes.
Q Have you worked with Ms. Malone before?
Yes.
Q Tell us about your work with Ms. Malone.
She's the GM of one of our golf clubs, so I've done a lot of work with Sarah Malone.
Q In her capacity as general manager of the Trump International Golf Club Scotland?
Yes.
MR. H REN: I move this document into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1450 in evidence.)
Q Were you ever provided a copy of the Ryden Development

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ppraisal that's Plaintiff's Exhibit 1450 when you were working on Mr. Trump's Statements of Financial Condition?
I don't think so.
MR. H REN: Let's pull up Plaintiff's Exhibit 1317.
Q Mr. Birney, do you see that the document on the first page is entitled, "Planning Statement for Trump International Golf Links Scotland?"
Yes.
Q nd do you see that it states below that "in respect of development comprising up to 550 dwellings (up to 500 residential units and a minimum of 50 leisure/resort units?"
Yes.
Q nd do you see that it is dated 24 July 2018?
Yes.
Q s they like to write dates across the pond.
Take a look at page three of the exhibit, Paragraph 2.1 where it states: "The development is the next phase of the continued investment in and development of the Trump Estate. It represents a revisal to the phasing originally proposed in terms of the OPP which is no longer economically viable." Do you see that?
Yes.
Q nd on page five of the exhibit in Paragraph 3.3, it states: "The description of the development is now as follows: 550 dwellings (up to 500 residential units and a minimum of 50

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leisure/resort units." Do you see that?
Yes.
Q Were you ever provided a copy of this document when working on Mr. Trump's Statement of Financial Condition?
I don't think so.
MR. H REN: I'll move this document into evidence, Your Honor.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1317 in evidence.)
MR. H REN: Let's go to Plaintiff's Exhibit 1319.
Q Mr. Birney, do you see that the document has a heading entitled " berdeenshire Council?"
Yes.
Q Do you see that it states on page two, item four "Planning application- PP/2018/1814-erection of 550 dwelling houses (up to 500 residential units and a minimum of 50 leisure/resort units." Do you see that?
Yes.
Q nd then on page five of the document at the top it states: "The development hereby granted shall be begun before the expiration of 15 years from the final approval of the matters specified in conditions or in the case of approval on different dates. The final approval of the last such matters to

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be approved," and then the word "Conditions" in bold follows. Do you see that?
Yes.
Q I'd like to direct you to page six where it states: " nd this is Condition Number 03, the total number of houses hereby granted shall not exceed 550 units. No more than 500 of the 550 units" -- excuse me -- "550 houses hereby granted shall be sold as private houses." Do you see that?
Yes.
Q nd Condition Number 04 begins with the following: "The golf villas and leisure/resort units hereby approved shall be occupied on a holiday letting or a fractional ownership basis only and for no other purposes whatsoever, including use as permanent residential units without the prior express grant of planning permission by the Planning uthority." Do you see that?
Yes.
Q Were you ever provided with this document when you were working on Mr. Trump's Statements of Financial Condition?
I don't think so.
MR. H REN: Let's go to Plaintiff's Exhibit 1157 and 1157 -- excuse me.
I'd like to move Plaintiff's Exhibit 1319 into evidence.
THE COURT: Granted. It's in.

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(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1319 in evidence.)
Q Mr. Birney, Plaintiff's Exhibit 1157 is an e-mail that's on the screen and it states an e-mail to you, to Donna Kidder copying Jeff McConney and llen Weisselberg. nd in the e-mail you wrote: "Donna, see attached 2015 Trump Organization cash flow shell." Do you see that?
Yes.
Q Can you describe just in general terms the nature of the preparation of the shell spreadsheet that's attached and described in your e-mail?
I think it's a big spreadsheet. Can we see the spreadsheet?
MR. H REN: Sure. Let's pull up the native file. This is PX 1157 native.
Q Mr. Birney, you can see a title that says "Trump Organization Corporate Cash Flow 2015" and then it has a date of 02.01.16, the same date as the e-mail you sent? Do you see that?
Yes.
Q nd what did you mean when you used the word "shell" in the e-mail?
That it's a spreadsheet that's built out but without any numbers in it.

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Q Okay. Let's go back to the spreadsheet. So can you just give us your understanding of the information contained in Column B?
Which column?
Q B?
My understanding is those are business segments of the Trump Organization.
Q So these are segments or assets to which numbers will later be inserted into the spreadsheet. Is that fair?
Yes.
Q Did you prepare this document with llen Weisselberg?
Can you scroll down, please, to the bottom? Yes.
Q There is a note at the bottom identified with the letter B. Does that relate to any of the assets that are listed above in Column B?
Can you scroll up, please? Yes.
Q Which assets does it relate to?
1290 venue of the mericas and 555 California Street.
Q nd as for the substance of Note B, did Mr. Weisselberg instruct you to include that information in the spreadsheet?
I think so.
MR. H REN: Let's go to Plaintiff's Exhibit 1293 and 1293 native already in evidence.
Q Mr. Birney, you see in your e-mail of February 25, 2016 to llen Weisselberg copying Jeff McConney you stated: " llen,

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see attached. I put three copies for the kids in their folders on your chair. You and Jeff have copies on your desks. I'll call you tomorrow."
Yes.
Q Do you -- taking a look at the attachments, the file names, what do you recognize those to indicate? Just the file names back on the e-mail? Do you have an understanding of "cover memo 2.24.16.docx?"
Yes.
Q nd what's your understanding?
It's a separate document that was attached as a cover memo of the operating financial summary.
Q nd did you prepare the cover memo to the operating financial summary?
Probably.
Q Why were you sending this e-mail to Mr. Weisselberg?
I don't remember.
Q Did you and he work on preparing the corporate cash flow spreadsheet together?
Yes.
Q Did you have an understanding when you were preparing the spreadsheet that it would be provided -- let me go back. Do you have an understanding of the phrase "the kids" as used in this e-mail?
Yes.

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Q nd what do you understand that to refer to?
The Trump kids, the Trump children.
Q Can you give us their names?
Yes, Don, Jr., Eric and Ivanka.
Q nd when you were preparing the spreadsheet that we saw that started as a shell on February 1st did you have an understanding that it would be provided to Donald Trump, Jr., Eric Trump and Ivanka Trump?
Can you ask the question, please, again?
THE COURT: Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
I mean, I probably did because of this e-mail.
Q Okay. Why did you send this e-mail to Jeff McConney?
I don't remember.
Q What was Mr. McConney's involvement in developing the corporate cash flow spreadsheet?
Can you toggle back to the spreadsheet, please?
MR. H REN: Sure. Let's pull up Exhibit 1293 native.
Jeff provided me information on this spreadsheet.
Q Do you have a recollection of what information he provided you?
Yes, I believe he provided me the corporate payroll and overhead information.

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Transcript continues on the following page....

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Q Just speaking generally, what was the origin of the project that began with the February 1st shell and either that was ongoing with Exhibit 1239 that was on the screen now?
I don't remember.
Q You don't have any recollection of being instructed in or around February 1st of 2016, we should get this corporation cash flow shell together and we should fill it in with information? Do you have a recollection of that generally?
I was probably asked to do it. I may have brought it up. I really don't remember.
Q Let's -- looking at the spreadsheet, looking at cell J21, can you tell us what that indicates?
Yes.
Q nd what does it indicate?
The adjusted net cash flow before distributions for the clubs in 2015.
Q When you say "the clubs," what are you referring to?
The golf clubs, Mar- -Lago, Trump Briarcliff Manor Development.
Q nd so just all of those properties, according to this spreadsheet, had an adjusted net cash flow before distributions of 5.6 million; is that right?
ccording to this spreadsheet, yes.
Q Looking at J31, what does that cell indicate?
The adjusted net cash flow before distributions for the

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commercial properties in 2015.
Q What do you mean by "commercial properties?"
Trump Tower, 40 Wall and Niketown.
Q What is the figure that's in the adjusted net cash flow before distributions column for those assets?
2.2 million.
THE COURT: Five-minute warning.
Q Cell J91, just want to get your understanding looking in column B, starting at row 86, there is an item entitled "Trump Corporation." Do you see that?
Yes.
Q nd then below Trump Corporation, there are a series of unallocated costs. Do you see that?
Yes.
Q Do you have an understanding of cell B87?
Which cell? Sorry.
Q B87.
Yes.
Q nd what's your understanding?
It is the unallocated corporation payroll for property development.
Q Is that B87 or B88?
I'm sorry. That was B88. B87 is unallocated corporate payroll general or generic.
Q nd cell B88?

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One more time.
Q Cell B88, what's your understanding?
Unallocated corporate payroll for property development.
Q nd B89?
Unallocated net medical benefits.
Q B90?
Unallocated corporate expenses.
Q In cell J91, those expenses total to 12.6 million. Is that what the document indicates?
Yes.
Q re any of -- when it says "unallocated," does that mean that these expenses are not allocated to the assets listed higher up in the spreadsheet?
Can you, please, scroll up slowly? Higher, please.
Yes. I think it means it doesn't include any corporate payroll or overhead that's already listed in the rows within the business segments.
MR. H REN: Okay. Let's go back to the e-mail, Exhibit 1293, and scroll down page two or three where the attachment is.
Q So Mr. Birney, this is the other attachment, the cover memorandum. Do you recognize that?
Yes.
Q Did you prepare this document?
Yes.

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Q It states in the first line, " s per your request," and you see that the memorandum is from llen Weisselberg to Don, Jr. Ivanka and Eric.
Do you have an understanding of what "as per your request" as it is used in this document means?
My understanding is they requested to see the financial performance based on this memo.
Q nd by they, do you mean the people in the "to" ine in the memo?
It's possible. I mean, it's probable.
Q You prepared the memorandum, right?
Yes.
Q Did you have an understanding when you prepared it of who it was for?
Yes.
Q What was your understanding?
It was for Don, Jr., Ivanka and Eric.
Q It states at the bottom of the memo --
THE COURT: One minute.
Q " fter reviewing the enclosed, let's get together to discuss at your convenience."
re you aware of any discussion among llen Weisselberg, Donald Trump, Jr., Ivanka Trump and Eric Trump regarding this memorandum?
ny discussion after this memo was sent?

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Q Either one, before or after. Let's start with before.
I don't know. I -- I don't remember any of these meetings. I may have been invited. I may not have been invited.
Q Do you have a recollection sitting here today as to whether this memorandum or the native spreadsheet Exhibit 1293 were discussed in the meeting with llen Weisselberg, Donald Trump, Jr., Eric Trump and Ivanka Trump?
I don't remember any meetings.
MR. H REN: Okay.
THE COURT: Okay. Let's take a 10-minute break. I will see you back here in 15 minutes.
(Witness exits the stand.)
(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
THE COURT: The witness, please.
THE COURT OFFICER: Witness entering.
(Witness resumes the stand.)
THE COURT: Let's continue.
Q Mr. Birney we are going to switch topics to did there come a point in 2021 when you participated in a virtual meeting about the 2021 Statement of Financial Condition?
Yes.
Q Did that meeting occur over a service called Google

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Meet?
Probably.
Q Can you describe what Google Meet is?
Google Meet is a video call service through Google.
Q In a Google Meeting, you can speak to people about video and share documents; is that right?
Yes.
Q The meeting that I asked you about, how many participants were in the meeting?
I worked remote for 2021, so there were a lot of these calls. So can we be more specific about which meeting you're referring to?
Q Sure. Specifically a meeting over Google Meet about the 2021 Statement of Financial Condition.
There were multiple meetings in 2021 as I was remote.
Q Were there any meetings about the 2021 Statement of Financial Condition in which Donald Trump, Jr. and Eric Trump participated?
Yes.
Q So about -- speaking about that meeting, how many other participants were there other than those two people?
Myself, lan Garten, Ray Flores, Jeff McConney.
Q llen Weisselberg was not in the meeting?
I don't think llen Weisselberg was in that meeting.
Q pproximately when did this Google Meeting occur?

Probably in October of 2021.
Q During the Google Meeting that we are talking about now, did you share any information with the other participates?
Yes.
Q What did you share?
I shared documents on the screen.
Q nd what were those documents?
I believe I toggled between a few documents during the call. One I think was a Statement of Financial Condition summary. One was the supporting data spreadsheet. nd we may have seen the Word document which would have been the -- a draft of the final Statement of Financial Condition.
Q You mentioned a Statement of Financial Condition summary. What did you mean by that?
I think I put together a one-pager, like a one-page spreadsheet that showed the 2020 Statement of Financial Condition versus the 2021 Statement of Financial Condition with some sort of a difference in probably dollars and percentage between the two.
Q Can you describe visually how the spreadsheet looked?
From what I remember, it was a fairly simple one-page spreadsheet with asset or asset classes on the left column and 2020 or 2021 on the next column, and then the other year on the column after that and then a difference column.
Q Did the spreadsheet have a title?

Yeah, I'm sure it had a title.
Q Would the title have included the phrase SOFC?
I don't -- probably.
Q I'm only asking these questions because I'm not aware that we have a copy of this particular summary, so I'm trying to get an understanding of how it appears or what words are used in it.
Would the phrase "Statement of Financial Condition" or "SOFC" likely appear in the summary spreadsheet you're describing?
Likely.
Q Focusing back on this Google Meeting, were any valuation methodologies discussed on the call?
MR. ROBERT: Objection.
THE COURT: What are the grounds?
MR. ROBERT: This is a meeting with lan Garten who is general counsel of the Trump Organization, so whatever discussions they had at this meeting is subject to Trump Organization privilege as well as my client's privilege.
MR. H REN: I would state Mr. Birney has already testified about this in his transcript. This issue has been out in the public for many, many months.
MR. ROBERT: Yes. So Mr. Birney testified for a period of five days before the ttorney General in the examination under oath stage and the issues that Mr. Haren

is about to get into didn't happen on the first two days and it was only the first two days that the Trump Organization was allowed to have counsel in the room. Mr. Garten was in the room as well as the attorney for the Trump Organization.
On the subsequent three days, it is my understanding the ttorney General specifically prohibited the Trump Organization from having an attorney there. So to the extent Mr. Birney did testify about it at that point, we were not in the room to be able to object to it that this was a privileged conversation. That's why we are now making the objection that it is privileged.
MR. H REN: The Court ruled in September of 2020 this is about documents in the possession of Morgan Lewis & Bockius that all documents related to preliminary valuations of the Seven Springs easement as documents related to a preliminary valuation are of a business and not legal nature. The question posed to Mr. Birney during his examinations, which I will just say again, you have had transcripts of for ten months and have been out in the public pertain to valuation and valuation discussions, not legal advice.
MR. ROBERT: Those documents, as far as I know, are not the public domain. nd to your point, Mr. Haren, if you're talking about a court ruling in September of 2020, my notes show that the three days of the examinations when this

issued came up were in 2022. So whatever ruling the Court had then may have been documents maybe appropriate to Ms. Dillon's testimony. Right now, we are talking about what Mr. Birney knows, what took place in that conversation. I think you've established in that Google Meeting virtually that there were people in the room including my clients and the general counsel. So our view is that meeting is absolutely privileged.
MR. H REN: So I direct you to plaintiff's statement of undisputed facts, Exhibit 138, NYSCEF 946 containing Mr. Birney's testimony from pages 1183 through 1197 currently sitting on the docket of the court, discussed at summary judgment. It is part of the record. It is in public with no objection from your clients discussing the content of this meeting.
MR. ROBERT: Right now for the first time, you're asking a witness under oath to discuss the substance and consents of the meeting. To the extent whatever is out there is out there, but right now, this is the first opportunity we have to object to this fact, that this was a privileged meeting.
MR. H REN: You had the opportunity to make that objection since you received the transcripts of investigative testimony back in 2022 and you could have made the same objection in the summary judgment papers.

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MR. ROBERT: I am not a aware of a procedure whereby something that happened in the past, we are under an obligation until you have a witness on the stand that you are now inquiring about the substance of that conversation. s I said, the Court had, as far as I understand, extensive briefing during the special proceeding. Obviously, Mr. Kise and I were not part that of that, but in my reading of it, Your Honor made certain with third parties and whatnot. Notwithstanding any of that, Mr. Birney's testimony, as far I understand, was not part of what this Court's ruling was.

MR. H REN: I will just say in line with the Court's prior rulings, that valuation is of a business and not a legal nature, I plan to keep my questions specifically to the issue of valuation and Mr. Birney's prior testimony, which in any event is admissible as an admission of a party because he is a Trump Organization employee.

MR. ROBERT: But you can't have an admission of a party when there is a conversation with counsel for the party while there's already an investigation that's underway. I don't remember the date that you started your investigation, but clearly, these meetings in March of 2022 is when it's, as far as I know, very active especially in this court with regard to enforcement of subpoenas and your investigatory practice. So there is no question that during this time, whatever conversations happened with counsel for

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the Trump Organization is a privilege of the Trump Organization.

THE COURT: ll right. Give me a moment.

MR. ROBERT: Yes, sir.

(Whereupon, there was a pause in the proceedings.)

THE COURT: I'm not going to try to untangle the whole history of what was waived or not. However, the fact that there was a lawyer in the room doesn't mean that there was any attorney-client information being passed back and forth. The client asking or the attorney responding, this was all business. nd my next point, basically, this is all -- this was all business related and that's what the earlier rulings were.

I understand that counsel -- current counsel for defendants weren't there, but when I looked at this extensively and finally, I don't know what the questions are. Nobody knows what the questions are except the questioner, so I'll overrule -- there is a general objection because a lawyer was in the room is the attorney-client privilege, but if there is a specific question that addresses legal advice, we can revisit it as opposed to business advice.

Mr. Kise.

MR. KISE: Yes, Your Honor. Thank you. So I think we have to draw a significant distinction between the prior

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ruling which related to communications that took place, I believe, with Ms. Dillon in the 2015, 2016, 2017 time period. Historical conversations, I will call it. That's a very different thing than a conversation during the course of an ongoing ttorney General investigation where a lawyer is present and the subject matter of the investigation is the subject matter of what they're talking about. So it's no longer strictly business.

I mean, now you're talking about conversations that are taking place while there is an active investigation about that very subject. That's very different than the Court's prior rulings because the Court's prior rulings again related to historic conversations before that predate as far as I know even any investigation. So now you've got -- and there are no third parties involved in this particular conversation.

This isn't a situation where you have outside counsel or outside parties. This is all self-contained within the corporation. They're discussing the Statement of Financial Condition. Those very Statements of Financial Condition including the 2021 statement are the subject of the ttorney General's investigation and now case. So I think to say that there's been any waiver or that these would not be privileged in some way because they relate in part to business doesn't take into account the context of

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the conversations because these are no longer -- at this point, they're no longer business conversations. t this point, these are corporate employees and officers with the general counsel of the corporation discussing actively -- discussing a subject that is actively under ttorney General investigation.

nd so I don't see how the privilege -- the privilege would be at its peak under those circumstances respectfully, Judge, because that's where the privilege would apply the most is when the corporation is discussing internally the very subject matter that is at the core of the investigation.

THE COURT: Cliff, have you been teaching New York law to Cliff here?

MR. ROBERT: He's doing great.

THE COURT: He's pretty good at that. I think that's a wonderful distinction. However, just the fact that a lawyer is present in the, room we don't know that he said anything or that they asked him anything. Overruled without prejudice based on the particular testimony we hear.

MR. W LL CE: Your Honor, I apologize for interrupting my colleague, but I guess this raises one issue which Mr. Haren mentioned during the exam which is we don't have any documents or the underlying documents presented during this meeting. If those were withheld because of

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privilege, but haven't been logged, we would appreciate identification of those documents that were withheld during this period for privilege if there are -- if that is the reason we don't have some of these materials and we're happy to put in a letter, so that it is reflected; but I think we would like to make that request.

THE COURT: Exactly. You'll have to really specify where we are in this. I just want to also return to what Mr. Kise said. I specifically said I'm not claiming -- I'm not ruling based on waiver because that would take a lot of unpacking at this point. So objection is overruled. You are not prejudiced based on the specific testimony and let's continue.

Q Did you answer the question were any valuation methodologies discussed on the call?

THE COURT: Repeat that louder.

Q Were any valuation methodologies discussed in the Google Meeting?

THE COURT: Please answer.

Yes.

Q Which valuation methodologies were discussed during the Google Meeting that we are discussing now?

The golf course valuations.

Q nd specific, did you discuss any information learned from Marcus & Millichap during the Google Meeting?

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Yes.

Q Did you convey any information about the impact of that advice on the golf course valuations in the 2021 Statement of Financial Condition?

Yes.

Q What did you convey about that? Keep your answer specifically to valuation.

I believe I said the only thing that really changed from last year was the golf courses. The reason we changed the golf course valuations is because we had a call with Marcus & Millichap and they advised similar to what I testified previously that they -- they value golf courses using eight to ten time EBITD or two to three time revenue multiplier.

Q nd you would agree it was a fairly significant change in valuation method from how the golf courses had been valued in the previous years?

It was different.

Q Did you want to make Eric Trump and Donald Trump, Jr. aware of the change?

MR. KISE: Your Honor, objection. So I'm not exactly sure where's he going with this, but I also want to put another objection on the record. To the extent the question is calling for evidence of subsequent remedial measures, changes that were made during the course of time that relate to perhaps a reaction to the investigation, we

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would object to its introduction.

The New York Evidence guide which is only in line, you apparently don't have that statute, but provides at Section 4.19 that evidence measures taken after an event, that if taken before the event would have made injury or damage less likely to result in civil proceedings is not admissible when offered to prove culpable conduct in connection with the event. So I realize that this comes up as in most experiences -- this issues comes up with respect to negligence cases --

THE COURT: Exactly.

MR. KISE: -- whatnot, but based on the plain language of 4.19, it is not limited to that. The only case so far that I can find, I know you're not going to like this, but the only case so far that I can find that makes this point is the Domino's case where the court there pointed out that the notion that a company would react to a government investigation in which it clearly was a target by taking such steps meaning -- I am skipping the long form -- taking steps, meaning remedial steps is hardly surprising. Indeed, to the extent they might be considered "subsequent remedial measures," which should be encouraged rather than discouraged, their admissibility is doubtful.

So based on the plain language of 4.19, anything that relates to any kind of subsequent remedial measure that

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was taken during the course of the investigation, we think is inadmissible for that reason, that it is evidence that's consequent to remedial measure.

The other thing I will point out --

MR. H REN: m I able to respond to the first point before you go to the second point?

MR. KISE: It is all connected.

THE COURT: Let Chris continue.

MR. KISE: I want to make sure the record is clear that the objection on privilege is a continuing objection, not that we have to object on each question.

THE COURT: Yes, that's understood. Let me also go back to that. I used to -- in another case, I've done a lot of research on the attorney-client privilege and the one thing that's very clear is you can't take a non-privileged document, give it to an attorney and say now it is privilege, which seems to me somewhat similar. You can't put an attorney in the room. There is a meeting about accounting matters, valuation matters. I don't know what Mr. Garten's knowledge of accounting and valuations is, but just the fact that he is there, I'm just adding that I'm not arguing your point.

First, threshold question. Does anyone know if the subsequent remedial measure rule applies in non-jury cases?

MR. KISE: I have never heard of a non-jury

exception to it.
THE COURT: Nor have I, but I'm just wondering.
MR. KISE: I have never heard of a non-jury exception.
MR. H REN: Certainly, at lunchtime, research topic.
THE COURT: Let's hear the general response to the subsequent remedial measure objection.
MR. H REN: Sure. So I'm not asking the question for the purpose of showing a subsequent remedial measure that was or wasn't taken. There is an issue in this case as who as the top executives of the Trump Organization from 2017 to 2021 had authority to take certain steps. nd I'm asking the question to establish the role of certain people in approving a change in valuation methodology during the relevant period. That is the reason for the question, not to establish or use any remedial measure that was taken to show culpability.
MR. KISE: So to the extent it is not designed to show culpable, than obviously the objection wouldn't apply; but I stopped because I wasn't sure of that. So if that's the representation that they're not seeking to introduce this, that's fine.
With respect to the privilege, one more thing, though, and that is the change in methodology. What hasn't

been established is whether or not that change in methodology came about as a result of the question by counsel or a recommendation by counsel. That's the danger of getting into all of this, is that there should be some recommendation by counsel that hey, you guys should do "X" or you guys should do "Y."
This is why we think that these conversations are inherently privileged and Your Honor is right, not simply because an attorney is in the room. It is not converting an otherwise non-privileged conversation, but to the extent that these changes are discussed in the context of an ongoing investigation and methodologies are changed as a result of advice from counsel, and I don't know that this witness or any other witness is necessarily equipped to draw those fine distinction, which is why we are raising.
(Continued on the next page.)

MR. H REN: If we could pull up Exhibit 1501.
You can look at any of the cells about the golf course memberships of 2021 and it will say on the advice and guidance -- they don't say "upon the advice of counsel."
THE COURT: Why don't we go directly to the question that Mr. Kise raises. Well, first of all, did Mr. Garten participate at all in this meeting at which he was present? Did he say anything, did he answer any questions, did he have input into this discussion?
Yes, that's a question to the witness. Sorry for stealing your thunder here.
THE WITNESS: It was a conference call. I'm sure he said something.
THE COURT: I don't think that will do it. Objection overruled.
MR. H REN: Could we have a read back of my question before the long interlude?
THE COURT: Yes, please read back.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Q nd that before golf course methodology?
I believe the purpose of the call was to update them on the status of the current year's Statement of Financial Condition, so I said that I can't really answer if I wanted to say that.

Q So would it refresh your recollection if we pulled up some of your prior testimony, pages 1194 to 1195?
Sure.
Q Starting at line 17:
"QUESTION: So I'm trying to understand, the change is discussed about golf club valuation method. You described it as a consensus decision among you, Mr. Garten and Mr. Flores; correct?
" NSWER: Yes.
"QUESTION: Does that decision need to be approved by someone else at the company who is superior to the three of you after it's made in your group consensus?
" NSWER: I don't know if there was an official approval. I think that's why it brought up the change in methodology in that call with Don and Eric."
nd I just said "okay" and you continued your answer: "So that they were at least aware."
Does that refresh your recollection as to whether you wanted to advise Donald Trump, Jr. and Eric Trump about the change in golf course methodology that occurred in 2021?
I discussed it. I don't know if I wanted to discuss it. Can you ask the question in a different way maybe?
Q Sure. We can look at your testimony. It says "I think that's why it brought up the change in methodology in that call with Don and Eric so that they were at least aware."

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Why did you want to make them at least aware of that change?
Because it was a, as you put it, significant change to the year before.
MR. H REN: ll right. Let's pull up Plaintiff's Exhibit 1086.
Q Mr. Birney, do you recognize this document?
Yes.
Q What do you recognize it to be?
n e-mail from myself to Jeff McConney on October 23, 2017.
Q nd do you have an understanding as to what the attachments are?
Yes.
Q nd what's your understanding?
The drafts of the spreadsheets that are used for the annual Statement of Financial Condition in 2017.
MR. H REN: Okay. Let's -- I'd like to move this document into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1086 in evidence.)
MR. H REN: Let's put on the screen Plaintiff's Exhibit 1086_native01.

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Q Mr. Birney, this is an attachment to the e-mail we were just looking at. Do you recognize it?
Yes.
Q What do you recognize it to be?
This was attached to this e-mail?
Q Yes.
This is the October 10, 2017 draft of the Supporting Data spreadsheet.
MR. H REN: I'll move the native document on the screen into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1086_native01 in evidence.)
MR. H REN: Can we scroll down to Row 1004, please?
Q Mr. Birney, the information contained in Row 1004 from Column J to Column M, we talked about this in a different spreadsheet, but just to get your understanding again does that information track asset values between the -- this draft and the prior year?
Yes.
Q Did you have a practice of maintaining a cell to track overall asset value changes?
Multiple cells, yes.
Q nd by "multiple cells" are you referring to the items

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in Row 1004 right there from J to M?
There is a whole formula in -- there is a lot of numbers in Column K and a lot of numbers in Column O that track differences.
Q But in terms of the overall total, did you have a practice of maintaining a cell to track the overall total of asset values from one year to the next?
I think so.
Q Did you have an understanding when you were working at the Trump Organization that you might be asked how asset values were shaping up as compared to the prior year?
Yes.
Q Did Mr. Weisselberg generally ask you about asset values from one year to the next?
Yes.
Q Did he ever tell you that Mr. Trump wanted his net worth on the Statement of Financial Condition to go up?
Can you repeat the question, please?
Q Did llen Weisselberg ever tell you that Mr. Trump wanted his net worth on the Statement of Financial Condition to go up?
Yes.
Q Where did that occur, your conversation with Mr. Weisselberg?
I think that happened in llen's office, llen

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Weisselberg's office.
Q nd approximately when did that occur?
Between 2017 and 2019.
Q Okay.
MR. H REN: Your Honor, I have no further questions for this witness.
MR. KISE: Just on that, I just want to be sure the record is clear if that question-and-answer series is being offered to establish what Mr. Weisselberg told Mr. Birney, that's one thing, but not for the truth of the matter. In other words --
THE COURT: I think that's right.
Would the ttorney General agree?
MR. H REN: I think there are a number many reasons why that statement is admissible. It's admissible to prove Mr. Weisselberg's state of mind or the admission by Mr. Weisselberg was a Trump Organization agent. It's admissible to show the existence of a conspiracy. We can argue admissibility later, but it's certainly admissible for a number of reasons.
THE COURT: Yes, but the question is is it admissible to show the truth of the statement.
MR. KISE: Right. I don't think it's admissible to show the truth of the -- that would be the truth of the statement itself. The fact that Mr. Weisselberg told

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Mr. Birney that and whatever Mr. Birney's state of mind resulting from that, that's fine. But to establish the underlying truth of the matter therein that there is some underlying conspiracy, I don't see how that would be admissible for that purpose.

MR. W LL CE: Just to clarify is it -- the question is from Trump to Weisselberg. That's hearsay. Weisselberg to Birney for all the reasons Mr. Haren explained is admissible.

THE COURT: I think we all agree.

MR. KISE: For all the reasons except proof of a conspiracy, the fact that Mr. Weisselberg said anything to Mr. Birney, Mr. Birney is not a coconspirator, he's not alleged to be a coconspirator. So whatever Mr. Weisselberg may have told Mr. Birney isn't evidence of any conspiracy. It doesn't form any evidence of an agreement or conspiratorial conduct. In order for it to be evidence of a conspiracy, you would then have to go to the truth of the matter. In other words, is it true what Mr. Trump told Mr. Weisselberg about increasing the statement. Exactly what Mr. Wallace just said they weren't admitting it for.

MR. H REN: I would just state there is case law, including People versus Caban, 5 NY3d 143. "The acceptance of an invitation to take an act can be a verbal act that is an element of a conspiracy."

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There is case law about statements like this that indicate they tend to show the existence of an agreement and they can be admitted for that purpose. So we're happy to put in a letter on that if there is some need to further specify the purpose for which the statement can be used, but there is -- I don't think there is any doubt that the evidence itself is admissible for the reasons Mr. Wallace mentioned.

MR. KISE: I think we might because again the case law I believe Mr. Haren is referring to are case law about statements between coconspirators, not between some alleged conspirator and some third party about what some other alleged co-conspirator said. That's the heart of hearsay. So while statements between coconspirators might be admitted for that purpose for demonstrating an agreement, the having -- they're mixing concepts which is not infrequent. They're mixing hearsay and they're mixing, you know, the center, but we can brief all this. We don't have to spend all day --

THE COURT: Okay. By tomorrow, two-page minimum?

MR. KISE: We would need to see -- yes, yes. We need to see what their case law is, but yes.

THE COURT: Okay.

MR. H REN: Thank you, Your Honor.

THE COURT: ll right. Will there be any cross examination of this witness at this time?

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MR. KISE: No, not at this time.

THE COURT: Plaintiff, would you like to call your next witness?

MR. MER: Yes, Your Honor. The People call Mark Hawthorn.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?

M R K H W T H O R N, called by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes.

THE COURT OFFICER: Please have a seat.

State your full name and either business or home address for the record.

THE WITNESS: My name is Mark Hawthorn. My business address is 725 Fifth venue, New York.

THE COURT: nd please speak right into the microphone, directly like this, loudly, clearly, slowly.

DIRECT EX MIN TION

BY MR. MER:

Q Good afternoon, Mr. Hawthorn. It's good to see you

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again. Just for the record, my name is ndrew mer on behalf of the People. re currently employed?

Yes.

Q nd where are you employed?

The Trump Organization.

Q nd what is your current title?

Chief operating officer of Trump Hotels.

Q We'll circle back to your employment responsibilities in a minute, but can you summarize for us your educational background after high school?

fter high school I attended the University of Florida. I studied accounting, got a bachelor's and a master's degree in accounting, graduated in the year 2000.

Q nd since graduating have you received any professional certifications or licenses?

Yes, the CP license in the state of Florida.

Q nd what did you have to do generally speaking to obtain your CP license?

You need to meet the required school credits to sit for the CP exam and then you have to sit for the CP exam to be awarded the license and you have to upkeep your license by taking continuing professional education.

Q Can you describe for us your employment history after graduating from University of Florida with your bachelor's and master's degrees in accounting?

Yes. fter graduating, I was employed in the public accounting industry. So first, for rthur nderson from 2000 to 2002 then at Ernst & Young, 2002 to 2004.

Q nd what type of work generally speaking did you do when you were employed by those accounting firms?

I did audit engagements on behalf of the accounting firm, for both public and private companies.

Q nd when you say "private companies," is that similar to the Trump Organization?

It would be a company that doesn't have public stock or public debt versus an SEC registrant being a public company.

Q Just to circle back to my question, that's similar to the Trump Organization; correct?

Correct, the Trump Organization does not have stock or public debt.

Q nd where did you next go after your employment with those two accounting firms?

Then I worked in an industry at a organization called Kerzner International. I joined there in 2004 as a financial reporting manager. That's a hospitality firm that owned and operated luxury resorts. I continued to work there until 2016 in various levels of responsibility in finance and accounting and treasury.

Q Did you do audit work there as well?

I did not. I was a client -- I was the actual client.

I worked with the auditors of the company, but I was a representative the company, so I wasn't necessarily auditing. I was preparing the information.

Q nd just so I understand you were preparing information that you were providing to the outside accounting firm who was the auditor; is that right?

That's correct.

Q nd what did you understand your responsibility to be in terms of providing information to the outside accounting firm?

To be responsible, diligent, provide truthful information that's accurate.

Q Can you -- and then am I correct you went to the Trump Organization in 2016?

In February of 2016, I was hired as the chief accounting officer of Trump Hotels and I've remained in employment there with varying degrees of promotion, currently in my role as chief operating officer of Trump Hotels.

Q Why don't we go through the various titles that you have held at the Trump Organization. You mentioned chief accounting officer, which is the -- that's the position you started at?

Correct.

Q nd who did you report to in that position?

I reported to a gentleman named Eric Danzinger who at

the time was the CEO of Trump Hotels.

Q nd what was your next position after chief accounting officer?

I really just continued in that role. In that role I was the highest financial responsibility person in the hotel division, so simply in I believe January of 2020, my title was just updated to chief financial officer, although my duties were pretty much similar, still reporting to the CEO.

nd then the CEO departed the company in May of 2022 and I was promoted again to chief operating officer overseeing the operations aspects of the hotel division.

Q Has anybody assumed Mr. Danzinger's position as CEO of the hotel's division?

No. There is no CEO, but effectively I now oversee the hotel brand operations.

Q So are you the most senior executive person within the hotel's division of the Trump Organization?

Yes.

Q nd can you just explain to us how the hotel's division fits within the overall corporate structure of the Trump Organization?

Everything related to the hotel properties that we own and/or manage. So the organization as you may be familiar owns commercial real estate, operates golf courses and has other holdings, so the hotel division operates specifically to the

owned and managed hotels in the hotel portfolio.

Q re there other divisions that are at the same level as the hotel division that deal with the other aspects of the business that you've just mentioned?

I would say, you know, there is the golf -- private golf club and public golf clubs, which is part of hospitality. Then you have real estate realty division. Those are the two that come to mind that I might interact with the most.

Q For a golf course that also has a hotel, how does that fit in?

It's both -- right. It's a golf resort, let's say. So we have several properties that have overnight accommodation, right, for a hotel where guests can stay. Then those hotels may also have golf courses situated on them. So the consolidated reporting would be under the hotel division auspices, but I would work with individuals in the golf division as well.

Q Now, in terms of going further up the chain where does the hotel division report into?

So currently I report to Eric Trump.

Q nd what is Mr. Trump's position?

I believe he's EVP of the Trump Organization.

Q nd just for the record, executive vice president?

Yes, I believe that's right.

Q nd who has been the direct report to the head of the hotel's division since you joined in 2016 through today?

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So if I understand your question correctly, so the CEO of Trump hotels, my former boss, Mr. Danzinger, reported to Eric Trump prior to his departing and now that I'm in that effective role, I report to him.
Q So just to summarize for the entire time that you've been with the Trump Organization the hotel's division has reported directly into Eric Trump; is that right?
I think that's fair.
Q You spoke about the accounting function within the hotel division. How does that relate to the accounting function over which Mr. Weisselberg presided as chief financial officer while he was at the company?
So in my role I would oversee the accounting and finance for the hotel properties and I would provide information as requested from time to time from, let's say, the corporate accounting function, which was led by Mr. Weisselberg at that time when he was employed there.
Q nd you are getting directly to my inquiry. There is a separate corporate accounting group that's separate and apart from the hotel's division. That was the group that Mr. Weisselberg was the head of while he was at the company; is that right?
Yes.
Q nd who did you interact with in corporate accounting?
From time to time Mr. Weisselberg, Jeff McConney, Donna

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Kidder. Those are probably the three individuals most interacted with.
Q nd by the way, where is your office located in relation to the corporate accounting group?
Different floor. So I'm on the 25th floor in Trump Tower; that group is on the 26th floor.
Q nd can you just describe to us what your working relationship was with Mr. Weisselberg during the period of time that you both overlapped at the company?
More like a helpful business partner. If information was required, I would provide information.
Q Was there any direct or dotted line reporting relationship between you and Mr. Weisselberg?
I was -- perceived him to be more senior than me, so if there is an aspect he required my help, I would certainly provide him information, but my direct report was to Mr. Danzinger.
Q nd can you also describe your working relationship with Mr. McConney during the period of time that you overlapped with him?
Similar to as I described.
Q Did you work at all with Patrick Birney?
Yes.
Q nd what was your working relationship with Mr. Birney during that period of time since you started at the company in

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2016?
Similar interactions. If there was information that in his role he required from the hotel division, then it would be my responsibility to provide that information.
Q nd you mentioned that you currently report in to Eric Trump; correct?
Yes.
Q nd have you reported directly into Mr. Eric Trump since you -- since Mr. Danzinger left?
Correct, since May, I guess, March of 2022.
Q nd during the time that you've been employed with the Trump Organization since 2016, what has been your understanding of Eric Trump's role at the company?
He is, you know, the leader of the company along with his brother Don, Jr.. I would say Eric is mostly involved in the operations whereas Don oversees development.
Q In connection with operations would you consider Eric Trump to be the chief decisionmaker at the company?
Yes.
Q Mr. Hawthorn, you testified that you are a certified public accountant; correct?
Yes.
Q re you familiar with generally accepted accounting principles in the United States commonly referred to as G P?
Yes.

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Q nd were you required to become familiar with G P for purposes of obtaining your CP license?
Yes.
Q nd do you continue to keep up with developments concerning G P as part of your continuing education that you testified to as a requirement for maintaining your CP license?
Yes.
Q What is your understanding of what G P is broadly speaking?
G P is a set of principles that oversees the accounting function, the books and records of how they're kept at a company that follows G P. So G P is an accrual basis method of accounting that is widely recognized and followed for private and public companies that are required to report under G P.
Q re you familiar with something known as a compilation engagement?
Yes.
Q What is your understanding of a compilation engagement?
Generally speaking a compilation engagement is an engagement where an accounting or audit firm would engage -- would be engaged by a company to put together a financial statement and it would be the lowest level of assurance as opposed to an audit.
Q When you say "lowest level of assurance" and you

mentioned "audit," are there other types of engagements that would come between an audit and a compilation in terms of level of assurance?

The three I'm most familiar with would be compilation, agreed-upon procedures and an audit.

Q nd what do you mean when you say "lowest level of assurance?" What does that mean?

MR. KISE: Your Honor, objection. Has this witness been called as an expert? I'm not sure what relevance this has. He's here as a fact witness and I've given Mr. mer some latitude, but he's asking what appears to be expert testimony about G P.

MR. MER: This is about his professional experience in connection with what he will soon testify is his involvement in the Statements of Financial Condition.

MR. KISE: Subject to that connection.

THE COURT: Objection sustained. I agree. I have a somewhat strict view of fact witnesses; what did you see, what did you hear, what did you do, and this seems to be to be asking more for expert testimony and you said you're about to get to what he does, so let's get to what he does.

Q Since joining Trump Hotels have you had any responsibility for compilation engagements?

Yes.

Q Which Trump entities have you worked on compilations

for?

401 North Wabash Venture LLC, which is commonly known as the Trump Chicago property, Trump Endeavor 12. That's the legal entity of the ownership of Trump International Doral.

Q nd which accounting firms have you worked with on those compilation engagements for the Trump Organization?

I've worked with Mazars and I've worked with Whitley Penn.

Q nd at Mazars who was the engagement partner you worked with on those compilations?

That was Donald Bender.

Transcript continues on the following page....

Q nd do you have an understanding as to why these two entities had to prepare compilations?

They were required under property loans for those properties, so that they would have to be submitted to the lender.

Q nd can you generally describe your role in connection with working on these compilation engagements for the Trump Organization?

Sure. I had responsibility of oversight of those reports.

Q nd what does that entail, oversight?

So if I may explain in appropriate context, so each property has its own financial controller. It maintains its own general ledger, data. So those properties would report those -- the general ledger data in their financial statements that I would review and oversee, and I would work with the accounting firm to get them the information they require in order to prepare the compilation report.

Q nd did you have an understanding as to what your obligation was as the client in providing information to Mazars and Whitley Penn as the outside accounting firm?

Yes.

Q nd what was your understanding?

I provided the general ledger and oversaw that the report was provided to them was from our system and was what

they needed to prepare the statement.

Q Did you have any understanding as to whether you had an obligation to provide truthful and accurate information to Mazars and Whitley Penn?

I certainly did.

Q What was your understanding?

To provide such information that was truthful and accurate.

Q We have been talking about compilations that you worked on with Mazars and Whitley Penn for Doral and Chicago.

Did you become aware at some point in time that there was a compilation prepared for Donald J. Trump that was his personal Statement of Financial Condition.

I would say in 2021.

Q In 2021, you did become aware of such a document, correct?

Yes.

Q What were the circumstances under which you first became aware that there was a Donald J. Trump personal Statement of Financial Condition?

I was aware of it through the media reports of it at that time and this ongoing litigation. My personal involvement with it was very limited. In addition to the compilation reports that we discussed, I was also tasked with overseeing audits of other entities that required financial audits. So

there's entities that we have in our ownership that the company has in its ownership in Scotland. So we have -- there is a Hotel Trump Turnberry. There's also Trump berdeen.

In working with the outside accounting firm for those audits, there was a situation that that they had required additional information about the parent company and led me to seek out some information from that statement to help them for that specific purpose.

MR. MER: I would like to go ahead and mark as Exhibit 1380 Plaintiff's 1380, a series of e-mails.

Q Mr. Hawthorn, you'll see this consists of some e-mails back and forth and then on page nine of this exhibit, there is a memo from you to Barry Masson and Fiona Kenneth.

Do you recognize this as a memo that you prepared and sent to them?

Yes.

Q Do you recognize the e-mails that are at the front of this exhibit as being e-mail exchanges between you, them and an individual known as Camron Harris at Whitley Penn?

Yes.

MR. MER: Your Honor, I ask that this be admitted into evidence.

THE COURT: Granted. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1380.)

Q The subject of the e-mails is audit update. What is that?

That is, as I was describing previously, the audits of the legal entity SLC Turnberry Limited and Trump International Golf Links Scotland Limited which is commonly known as Trump berdeen.

Q nd just to clarify, is this audit update one of the ways in which you first learn that there was a Donald J. Trump personal financial statement?

It was probably around that time in addition to the media scrutiny of it.

Q Can you just explain for us who the two recipients of the top e-mail and also your memo are, Barry Masson and Fiona Kenneth?

Those are the respective audit partners from the firm Johnston Carmichael. So in the context of this audit is Johnston Carmichael was working through the audits of the two entities I described in Scotland and they were requiring some additional information for their audit procedures.

Q Why were you the individual who was tasked with addressing their issues?

Because those fall into the hotel division and so as I described earlier, my oversight of audits and compilation work in the hotel division dealt to me.

Q Had you done this type of audit update with them in

prior years?

This year was a year where they had indicated they needed more information because their audit procedures had become more rigorous and they had standards that had changed since a previous year. nd effectively, what they were doing is for the narrow approach of testing the financial viability of those Scotland entities, they had asked for information about the parent company and the parent company's financial wherewithal in the event that these Scotland entities needed financial support.

In the past, this audit evidence was satisfied by some internal communication and letters effectively from the company vouching that we have the ability and the intents to hold this asset, to fund this asset if necessary. That in the past satisfied their requirement. In this particular year, they kept asking for more information and more documented information about the financial wherewithal of the parent company.

Q nd just so I understand what you're explaining, that was due to a rule change in Scotland?

That's what they explained to me. Not a rule change in Scotland, but they described it. It was probably some e-mails about it, about their auditing standards being more rigorous in the U.K.

Q Let me ask you to turn to page four of this exhibit. Just focus on Ms. Kenneth's e-mail to you and just read some

portions of it and I'll ask you some questions. The paragraph that begins "while we have received, she writes, "While we have received stress tested forecasts for each of the entities, we have not yet received any information from you in relation to going concern points four to six of my e-mail of ugust 6th."

So let me just stop there and say, what was your understanding of the going concern points that she is referring to?

There was probably a separate attachment or another e-mail of the information that she required for her audit testing. I don't recall off the top of my head, but effectively in what they were trying to again accomplish is provide some evidence or comfort for the reader of those financials that -- that those entities have financial backing from a parent in the event they may need it.

Q She goes on to say, "Obtaining evidence of both intention and ability to support is critical to us being able to provide an unmodified audit opinion."

Is unmodified audit opinion the same as we refer here to an unqualified audit opinion?

I believe so, yes.

Q She then says, "In relation to this, it might help us if we are able to understand more about where the funds that would be used to support the U.K. businesses would be coming from." Is that what you refer to as needing more information

about the parent?
Correct.
Q nd by the way, if we go to page -- we will come back to this, but if we go to page six, you see the bottom paragraph, she has a heading that says "going concern." Is that your understanding of what she was referring to by going concern?
I'm just reading through it. Yes, so similar to in the U.S., an entity to be a going concern that the financial statement and the opinion associated with it determines that there is another evidence that the entity will exist beyond 12 months. You think about the context of the time of this ask, this is the 2020 audit. If you recall, 2020 was a year when the world shut down to travel and tourism because of the COVID pandemic, so the financial statements on their own for these entities were not as robust as in past years because people couldn't travel to the resorts and the resort couldn't operate.
So if someone is looking at this financial statement in the U.K. in a vacuum, without any other information, they might say to themselves this entity is not having a great financial year. It might be not a going concern because it may not have enough of revenue to generate it for the next 12 months. The case that the auditor is looking for is trying to understand okay, if this entity can't exist over the next 12 months, if it doesn't have enough revenue, is there support available from its parent company to sustain it. So that's the nature and the

purpose of this line of questioning.
Q Let's go back to page four. I just want to focus you again on the same paragraph we were looking at. The last sentence of that paragraph states, "In the absence of obtaining a set of "group accounts for the Trump Organization," we do need to find other means of corroborating the position."
What did you understand Ms. Kenneth to mean when she refers to corroborating the position?
So they're trying to satisfy their audit requirement if a probably other clients that they have have a parent company that has publicly traded financial statement, audited financial statements, holding company financial statements, those would be readily available and exist that a company to provide. In the case of the Trump Organization, it has no requirement to do "group accounts" or a roll-up set of historic financial statements because there's never been a need to do so. So for her to corroborate that information, she needed additional information which is why I wrote this memo and provided the exhibits to satisfy her requirements.
Q Let's go ahead and look at your memo which is -- starts at page nine of the exhibit, and you write in the first paragraph, "In connection with the audits of golf recreation, Scotland Limited SLC, Turnberry Limited and Trump International Golf Links Scotland Limited, which you define as the Scotland entities, for the year ended December 31, 2020, we

are providing certain financial information of ownership to demonstrate the financial viability and ability to fund the operations of the Scotland entities, if required," correct?
Yes.
Q gain, which golf courses does this relate to?
So SLC Turnberry Limited is Trump Turnberry and yrshire, Scotland. West coast of Scotland is Turnberry. East Coast of Northern Scotland is berdeen, which is the other entity Trump International Golf Link Scotland Limited.
Q nd you go on to say the ultimate ownership of the Scotland entities is the Donald J. Trump Revocable Trust dated pril 7, 2014, the trust has ownership of significant cash and cash equivalents, real estate, management and license agreements and other assets (the group assets) as well as accounts payable and long-term loan obligations the (group liabilities), the long-term loans are collateralized and serviced from cash flows generated by the underlying real estate assets."
So were you familiar with the revocable trust as of the date of this memo?
Yes. The ownership entity of the ultimate parent of the Scotland entities.
Q Was that something you were aware of beginning with your employment with the Trump Organization soon thereafter in 2016?
Probably as soon as I encountered a question where in

operations, one of the hotels needed to report who their owner was, so I learned over time what the org chart looked like and ultimately that the trust was the ultimate owning parent entity of the various hotels that I worked on.
THE COURT: Five-minute warning.
Q You go on to say, "The trust does not prepare a consolidated financial statement on a regular basis. However, a recent accounting compilation as of June 30, 2021 prepared by the trusts accounting firm Whitley Penn provides for the following at their estimated current values."
First of all, where did you get the information about the trust not preparing a consolidated financial statement, but having a compilation as of June 30, 2021?
Right. So this is when I became aware of the Statement of Financial Condition being the most available type of document that is like a group consolidated financial statement. So I knew it existed.
Q I'm just trying to get more specific. Where did the -- did this information come from for you to put it in this memo?
The dollar amounts or the words?
Q The paragraph above the first bullet. The fact that there was this compilation, the date of the compilation, and that it was prepared by Whitley Penn? Where did you get that information from?

In my position, I certainly know what -- that the company does not have a consolidated financial statement like you just can't go on scc.gov and get the Trump Organization financials. So I was aware, like I said, through media reports and knowing that this other document is prepared and out there, that that would be some level of description of assets that could satisfy the scowled auditor's request for this matter.

Q You say very specifically that the compilation provides for the following at their estimated current values. That phrase "estimated current values," where did you come to learn that the compilation provides for estimated current values?

So for me to write this memo and fill in the numbers provided there, I had to get that from Patrick Birney. I didn't get a copy of the statement, but I understood how much cash -- how much cash does the organization have, what's the holdings that they have, so that I could write this memo on behalf of this request.

Q Was there a specific reason why in your memo to the Johnston Carmichael accountants that you mentioned that the compilation set forth estimated current values?

My understanding of the statement is it is not a typical historical cost G P financial statement; that it is a statement that provides an indication of value and that was the purpose of this statement.

Q Did you at the time that you wrote this memo have a

specific understand of what the phrase "estimated current values" meant?

Sure.

Q What was your understanding?

The fair value of the assets at a point in time.

Q nd the point of time of this particular compilation, did you understand it was as of June 30, 2021?

Yes.

THE COURT: One-minute warning.

Q For purposes of preparing this memo, did you obtain a copy of the 2021 Statement of Financial Condition for Donald J. Trump.

I did not obtain a copy. I had a phone conversation with Patrick Birney to get the limited information and then what I did in a conversation with Fiona and Barry, the auditors from Scotland, I suggested that we could organize a virtual Zoom meeting, in effect a Google Meet with Camron Harris because Camron Harris was the audit partner that issued the compilation with Whitley Penn, and so they -- they were keen to that idea, so that way, I could stay out of it. It is not really my area and so we organized a Google Meet. Camron Harris --

Q You're getting ahead of me. We will get to the Google Meet, but let me just ask one more question.

Did you ask to get a copy of the 2021 Statement of Financial Condition?

No.

Q Did you have any understanding as to why it might be -- well, was there an issue with you getting your own copy of the statement?

I just knew it was a very sensitive document. It was already in the press and scrutinized and I didn't need to be any part of it.

MR. MER: Now is a good time, Your Honor.

THE COURT: We will see you all at 2:15. Have a good lunch.

MR. MER: Can I just ask that the witness be admonished not to discuss his testimony with counsel?

THE COURT: I hereby admonish you not to discuss your testimony with anybody. Thank you. Have a good lunch.

(Witness exits the stand.)

(Whereupon, a luncheon recess was taken.)

THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding.

Make sure all cell phones are on silent. Laptops and cell phones will be permitted but only to the members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Counselors, are we going to put the schedule of witnesses for the week on the record at this point?

MR. W LL CE: Certainly, Your Honor. I will say for the People we are going to continue with Mr. Hawthorne's testimony this afternoon. The next witness will be Donna Kidder.

THE COURT: When do we expect to start her?

MR. W LL CE: I expect that will begin this afternoon. I don't know that that would be completed this afternoon, though.

Following witness would be Doug Larson, a former Cushman & Wakefield employee followed by Dave Mc rdle, also Cushman & Wakefield employee. fter that, our next witness would be Ray Flores, a former Trump Organization employee; Jack Weisselberg, an employee of Ladder Capital; Craig Robertson, also an employee of Ladder Capital; and then later in the week Dave Orowitz, a former Trump Organization

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employee.
I would just add that exactly how we proceed through that it do appears on which precise day it may depend a little bit on which of the witnesses the defendants choose to cross examine.
MS. GREENFIELD: Just one clarification about earlier this morning I thought you mentioned llen Weisselberg being recalled.
MR. W LL CE: No, sorry. That was Jack Weisselberg, his son.
MR. ROBERT: Jack is not tomorrow.
MR. W LL CE: Jack is not available tomorrow.
MR. KISE: Mr. Cohen is not coming this week.
THE COURT: The earliest that he will testify, apparently subject to my receiving the all-important doctor's note, is a week from today, Monday. So he will not be here this week.
MR. KISE: This is a key witness for the government. Of all the witnesses in the case they chose to play him on the video in their opening. So we just want to be sure that we have some understanding of that schedule. nd I know Your Honor is doing what you need to do there and everyone else, including the government is moving around Mr. Cohen's schedule now. So I would ask to the extent that becomes an issue on our side that we would have the same

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accommodation. I don't think it will, but if there becomes a scheduling conflict of some kind, we would want the same accommodation.
THE COURT: Sauce for the goose is sauce for the gander. That's the theme of this trial.
MR. W LL CE: nd I would note we tried to be cooperative and scheduled Mr. Cohen later because of counsel's schedule, so I think we could continue to cooperate on these issues and appreciate everyone's flexibility to the degree necessary.
I will also add, though, we did play testimony from Eric Trump, Donald Trump, Jr., Donald Trump, the father, and llen Weisselberg during my opening.
THE COURT: Yes, but they're all defendants.
MR. W LL CE: Fair enough, Your Honor.
THE COURT: Right. nd just to repeat, the earliest Michael Cohen will testify apparently subject to a doctor's note, which I hope to receive later today, would be a week from today, Monday the 23rd, but even that day is not definite.
Yes?
MR. KISE: I just also want to note for the record because I would be remiss if I didn't. He does continue to be active -- for whatever this is worth to the Court, he does continue to be active on social media. I know you can

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do that from a hospital bed, but he does -- I'm not a social media person, but I see he does continue to be active in his pursuit of my client on a fairly frequent basis on social media so he doesn't appear to be that infirmed.
THE COURT: Well, talk about sauce for the goose is sauce for the gander.
MR. KISE: We're not saying we don't have a medical excuse. He'll be here tomorrow.
THE COURT: Okay. Let's get the witness.
THE COURT OFFICER: Witness entering.
(Whereupon, the witness enters the courtroom and approaches the witness stand.)
THE COURT: Okay. Let's continue with the direct examination of Mr. Hawthorn, who I will remind, as I always do, is still under oath.
CONTINUED DIRECT EX MIN TION
BY MR. MER:
Q Welcome back. I'd like to pick up where we left off with your memo from November 23, 2021, which is Exhibit 1380 in evidence and it's page nine where your memo begins.
I want to just ask you about the first bullet that appears after you indicate that the compilation provides for the following at their estimated current values, then you reference group assets -- total group assets exceeding 4 billion, including unrestricted cash and cash equivalents in excess of

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290 million and restricted cash and escrow deposits in excess of 28 million. I think we established when you wrote this memo you did not have in your possession a copy of the 2021 statement; correct?
Correct.
Q So where did you get the figures that you used for this first bullet point?
So I had a conversation with Patrick Birney who is in possession of the document.
Q nd if we can pull up the 2021 statement. It's Exhibit 1354 and maybe we can put it next to that paragraph in your memo. If we can go to page four of the statement, which is the assets page, you'll see that this statement lists cash and cash equivalents at 293.8 million and escrow reserve deposits, restricted cash and prepaid expenses at 28.3 million. Do you see that?
Yes.
Q nd does that correlate to what you have in your first bullet?
Yes.
Q When you obtained this financial information from Mr. Birney, which you then forwarded on to the Johnston Carmichael accountants to address their audit needs, were you comfortable passing along the information without having seen the statement for yourself?

Yes.
Q nd would you have passed along the financial information in this first bullet if you had any doubt about the accuracy of the information?
The point of the memo is to just evidence that the parent has sufficient liquidity and a lot of holdings so I really was just trying to evidence that the parent has its financial wherewithal. I would have had no issue sending forward the statement if it was in my possession, but I didn't need to have it or have it and I felt it was a better way to have the auditors speak to each other and that satisfied my requirement. I had a singular focus in this memo and that was purely getting the audit of the Scotland entities completed.
Q I think my question was a little simpler, so let me try again.
Would you have passed along the financial information in this first bullet which you received from Mr. Birney if you had any reason to doubt the accuracy of the information? It's just yes or no?
If I doubted the accuracy would I have passed it along? I would not have passed it along unless I had some evidence or some comfort that the information was generally accurate, right.
Q nd I draw attention in the first bullet to the amount of unrestricted cash and cash equivalents of -- in excess of 290 million. Why call out that figure?

That's the most relevant to the Scotland auditors. I mean, they care about available working capital that would fund the Scotland operations. So if I'm just thinking about telling these auditors hey, the parent has a lot of liquidity, can I show you a bank statement, hence why I attached the bank statement to evidence, there is significant amounts of cash as well as, you know, it's not -- it's -- it's stated in this way to evidence that the parent has financial wherewithal to support these entities.
Q Did you have an understanding when you sent this memo to the accountants at Johnston Carmichael about who controlled the unrestricted cash and cash equivalents amounts in excess of 290 million?
I understood that it was controlled by the trust.
Q Would you have knowingly provided to the Johnston Carmichael accountants a figure for cash and cash equivalents that included amounts not within the control of the trust?
If I knew that I wouldn't have probably provided that.
Q Why not?
gain, you're trying to evidence the amount that the trust has to satisfy any potential cash needs of the Scotland operation.
Q nd in order to satisfy that requirement would the cash and cash equivalents have to be within the control of the trust?
Right. Hence why I sent them a bank statement of 133

million.
Q Did you have an understanding -- well, let me ask you about the 28 million because you also call out that amount which is restricted cash and escrow deposits. Why did you call out that?
It's just, again, further evidence that this is a very liquid company with sufficient holdings that is able to support the needs of its properties if required.
Q Now, in terms of the assets on the list, is the escrow -- the restricted cash and escrow deposits sort of the next level of available liquidity?
Correct.
Q nd did you have an understanding when you sent this memo to the accountants at Johnston Carmichael about who controlled the restricted cash and escrow deposits?
I understood it was controlled by the trust.
Q Now, Mr. Hawthorn, are you aware that Mr. Trump has a 30 percent minority interest in something known as the Vornado Partnership Interests?
Vaguely familiar.
Q I'm going to put up on the screen Plaintiff 3041, which is defendant's response to Plaintiff's 202 statement and specifically the response to paragraph 403.
Now, there is a chart that you'll see that has statement year, amount included based on 30 percent share in

Vornado Property Interests, total cash liquidity reported and then Vornado Property Interests cash as a percent of total cash.
nd I just want to draw your attention to the line for 2021. You'll see it has "total cash liquidity reported." That's the 293.8 million figure that was in the statement for 2021 and that's the number you then reported forward to the Johnston Carmichael accountants; correct?
Yes.
Q Okay. nd the defendant's response is that it's undisputed that the values listed are those reflected in the SOFCs and the amounts attributable to the Vornado operating entities are as stated. Do you see that?
Yes.
Q So I'm going to ask you to accept that as being undisputed.
Now, during Mr. McConney's testimony we've been referring to that 30 percent interest as Vornado cash, so I'm going to use that reference in my questions as well; okay?
Okay.
Q s the chart shows for 2021, the total cash is 293.8 and of that figure, 32 percent or 93 million and change is Vornado cash. Do you see that?
I see it.
Q Let me show you some testimony from Mr. McConney in this trial. It's at page 619 of the transcript and it's line 15

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to 20:
"QUESTION: Just so we're clear, Vornado cash is not cash that Mr. Trump has access to on his own; correct?
" NSWER: Correct.
"QUESTION: He cannot withdraw the funds from the accounts where they sit; correct?
" NSWER: Correct."
So were you aware that 32 percent of the 293 million of cash and cash equivalents was Vornado cash?
No.
Q Were you further aware that Vornado cash was not cash that was within the trust's control?
No.
Q Mr. Hawthorn, if you had known at the time you prepared your memo in November of 2021 that 32 percent of the $293 million figure reported in the 2021 statement as cash and cash equivalents was actually cash that was not within Mr. Trump's control, would you have included that amount in your memo as you did?
Probably not and it would have made no impact on the memo and its conclusions.
Q My question was just simple but you would have included it or not?
THE COURT: Yes, I'll direct the witness as I often do, just answer the question. No speeches, no commentary.

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The other side can ask you questions also.
So the first half of what you said was answered; the question the second half didn't.
THE WITNESS: Yes, sir.
MR. MER: Can I get the second half stricken then, Your Honor?
THE COURT: Yes. It was nonresponsive.
MR. MER: Thank you.
Q Now, let me show you Exhibit 3146.
Mr. Hawthorn, these are a series of e-mails between you and the Johnston Carmichael accountants as well as Mr. Harris at Whitley Penn that all postdate your November memo; correct?
Yes.
MR. MER: Your Honor, I'd ask that this be admitted into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3146 in evidence.)
Q nd this e-mail exchange relates to setting up the Google Meet call; correct?
Yes.
Q Let's go to page three. I just want to start with the e-mail that's in the middle of the page from you to Mr. Masson and Ms. Kenneth. You write to them and this is actually the

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e-mail we looked at that attaches your November memo. Isn't that right?
Correct.
Q nd the second sentence says, "I would also welcome a follow-up conversation if you can be available sometime Wednesday, November 24th." Done the British way; correct?
Correct.
Q Okay. nd did they express a need in the discussion you reference here to have a follow-up conversation after receiving your November memo?
I don't remember exactly, but I remember probably some phone conversations to make sure that they were satisfied in the information they required. So it culminated in the Google Meet that you had mentioned.
Q Well, is it correct then that they were not satisfied just with the memo and that they needed an actual call?
They were interested for their audit work papers to document that they had more information than just my memo.
Q nd in the e-mail above, which is actually an e-mail you sent to Mr. Harris on December 7, 2021, you enlist his assistants with a joint Google Meet virtual call with the Johnston Carmichael accountants to discuss the financial condition; correct?
Correct.
Q Was it your understanding that the Johnston and

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Carmichael accountants needed to put eyes on the Statement of Financial Condition?
They expressed an interest of that, so I helped to organize this to accomplish that.
Q nd you enlisted Mr. Harris because he had the statement and you didn't; is that right?
Correct.
Q Okay.
nd it was helpful for auditors to speak to each other because they talk the same language and understand you like Camron also understands their objective of trying to solely meet an impairment test for their individual audit.
Q You spoke their language too, didn't you?
Correct.
Q Okay. Now, if you look at the first page of the exhibit, the bottom e-mail is from Mr. Masson to you also copying Ms. Kenneth and he indicates in the second paragraph "will we be able to have sight of the compilation report during the call?"
Yes.
Q So that was something they needed to do for their audit procedures; is that right?
They requested it, yes.
Q nd then your e-mail at the top confirming that you will arrange and plan to have a sight of the compilation report

for both he and Ms. Kenneth to view; correct?
Yes.
Q Was there any reason why you didn't just ask for a copy of the statement so you could have this call with them on your own without having to involve Mr. Harris?
Like I mentioned before there is no need for me to have a copy and it gives the auditors better comfort hearing from the Whitley Penn auditor because he's most familiar with the statement that he could take them through it versus me.
Q nd you did in fact have this Google Meet virtual call with the Johnston Carmichael auditors and Mr. Harris of Whitley Penn; correct?
Yes.
Q Were there any other people on this Google virtual call other than the four of you?
No, four of us.
Q Was the 2021 Statement of Financial Condition shared with the Johnston Carmichael accountants during this Google Meet virtual call?
Yes, Camron Harris put it on his screen.
Q Did he put the entire document up on the screen and go through every page or only portions of it? Do you remember?
I believe he scrolled through it and answered any questions that they had. I was more of invited to the call but didn't say much on the call. I let them -- I produced both

parties and let them have their discussions.
Transcript continues on the following page....

Q For purposes of this call, did you have a copy of the 2021 Statement of Financial Condition?
No.
Q So, as of the time of this call, you still didn't have in your possession the 2021 statement, correct?
Correct.
Q To your knowledge, were the Johnston Carmichael accountants ever sent a copy of the 2021 statement either during or after this Google Meet virtual call?
No.
Q Do you know why not?
I think as we indicated, they just needed to see it, so that's all their audit needed. They had a sight of it because Camron Harris showed it. They had questions and he explained the answers to the questions and that was the end of it.
Q Was this Google Meet virtual call the first time that you saw any portion of the 2021 statement?
I believe yes.
Q Was it the first time you saw any portion of any annual Statement of Financial Condition for Donald J. Trump?
Yes.
Q Do you recall any discussions with anybody within the Trump Organization about whether you should or should not have access to an actual copy of the 2021 statement?
No.

Q Do you recall how long the call lasted?
The Google Meet?
Q Yes.
20 minutes.
Q To your recollection, were the Johnston Carmichael accountants satisfied with the information as it was shared with them on the call about the 2021 statement?
Yes.
Q Mr. Hawthorn, if you had learned just prior to this call that 32 percent of the $293 million figure reported in the 2021 statement as cash and cash equivalents was actually Vornado cash that was not within Mr. Trump's control, would you as a matter of professional ethics have advised the Johnston Carmichael accountants of that fact?
Yes.
Q nd why is that?
Just to be transparent of what it is and knowing that the cash still there is satisfying their requirement.
Q Based on the chart that we looked at, Mr. McConney's testimony and your involvement on the call, do you think reporting the 293 million figure to the Johnston Carmichael accountants was a misrepresentation?
It appears to have been overstated.
Q Okay. My question was very specific, though. Do you think it was a misrepresentation?

MR. KISE: Objection, Your Honor. That's calling for a legal conclusion.
MR. MER: I think accountants are capable of determining whether something is a misrepresentation and it is not within the purview of only lawyers to assess that.
MR. KISE: He is a fact witness, Your Honor. He hasn't been called as an expert.
THE COURT: I will sustain the objection to the extent of asking Mr. mer to explain what he means by a misrepresentation.
Q representation to the accountants that was inaccurate.
THE COURT: I will allow that.
Q Do you need the question again?
Maybe just say it one more time, so we are clear.
Q Based on the chart that we looked at, Mr. McConney's testimony and your involvement on the call, do you think that reporting the $293 million figure as a cash and cash equivalent figure was a misrepresentation?
THE COURT: No. We said "incorrect."
MR. MER: I'm sorry. I thought given my definition, I could ask it that way, but I will rephrase it.
THE COURT: Rephrase it.
MR. MER: Okay.
Q Based on the chart, Mr. McConney's testimony and your

involvement on the call, do you think reporting the $293 million figure to the Johnston Carmichael accountants as a cash and cash equivalent figure was inaccurate?
I think yes.
Q nd do you think -- I think you also mentioned in your prior answer you thought it was an overstatement, correct?
Correct.
Q Was that overstatement which the chart indicated was 32 percent Vornado cash, was that material?
Not for the purposes of this analysis.
Q Well, just the 32 percent overstatement. You don't think that's material?
Not for the purposes of this analysis.
Q Is it material in terms of accounting materiality?
MR. KISE: Objection. It is calling for an expert conclusion again. He already answered the question.
THE COURT: Sustained.
Q Do you know, to your knowledge, if the Johnston Carmichael accountants were ever advised subsequent to the call that 32 percent of the $293 million figure was Vornado cash not within the control of Mr. Trump or the trust?
I don't believe so.
Q Now, I'd like to turn to another topic, hotel management valuation. Let's go ahead and mark Exhibit 1308. You'll see the bottom e-mail is an e-mail from Mr. Birney to you

asking you to -- if you could update the THC management company valuation spreadsheet as of June 30, 2021, and then the e-mail above that is your response to him.
Yes.
MR. MER: There is a blank page, second page which is the native version which is the attachment to the e-mail. I'd ask that this be admitted into evidence, Your Honor.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1308.)
Q What is the spreadsheet that's referenced in this e-mail?
This is a listing of Trump hotels properties.
Q Is this the spreadsheet -- do you recognize this as the spreadsheet that you're attaching in the top e-mail that you then send back to Mr. Birney?
I do.
MR. MER: Your Honor, I'd ask that we admit the native spreadsheet.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit.)
Q Now, your e-mail to him, if we could just go back to that, indicates that it's reflective of the most current 2021 forecasts and 2022 budget projections and follows methodology as

applied in previous years. Do you see that?
Yes.
Q Was this something that you provided to Mr. Birney in previous years?
Yes.
Q nd for how many years had you been providing Mr. Birney with updates of this spreadsheet?
I don't recall exactly. Maybe since 2017 or something like that.
Q Did you have an understanding when you received the request from Mr. Birney to send an updated spreadsheet why he was asking for it?
No.
Q Did you have any understanding as to what use he was going to put the spreadsheet to?
No.
Q Let's go to the spreadsheet, so I can ask you some questions about it. You'll see it has two tabs to the spreadsheet where on the summary tab and then there is a cash flow projection tab. Let me start with the summary tab. What properties is this summarizing?
Trump hotels managed and owned properties.
Q re these are hotels that are part of the hotel division that you were in charge of?
Yes.

Q In charge of?
Yes.
Q What does management mean under agreement type?
It means that Trump hotels is the manager and has an HM or hotel management agreement for that property.
Q Now, under the column C, initial term, some properties say "owned." What does that signify?
That means it is the manager and the owner.
Q nd in accounting terminology, is there some phrase used to discuss -- to reference this type of business arrangement between where the same properties are both owned and managed by the same entity? I can rephrase it.
You mentioned that for these owned properties, the Trump Organization is both the owner of the hotel and the entity that manages; is that correct?
Correct.
Q Is it an affiliate of the hotel owner that's managing the property?
There is a separate legal entity that's established to be the management company, so that the hotel can operate under the Trump hotel's brand and have a similar-looking feel like every other hotel in the brand regardless of who the owner is.
Q So just to go back to my question, I am correct that it would be an affiliate that would be the managing entity --
Other entity owned by the trust.

Q nd is this type of business arrangement something that accountants call a related party transaction?
That could be a common term for it, yes.
Q nd then for the other hotels where it doesn't say "owned," but has a number of years, what does that signify?
That would signify the term of the management agreement, how long it -- and it says initial term, so I guess the initial -- most hotel management agreements are long-term from 10 to 15 to 30 years, or they have extension rights that could be at the manager's option, so I think this is just trying to categorize in a summary cell the nature of the HM or the hotel management agreement.
Q I guess what I'm wondering is for those properties where there's a number of years under initial term instead of owned, does that mean it is owned by somebody else?
Say that again. I'm sorry.
Q Sure. For those properties where it is indicated under initial term a number of years instead of the word "owned," does that mean that that property is owned by an entity outside the Trump Organization?
Correct.
Q So those would not be related party transactions, correct?
They would be an owner outside the trust. There's a little more complication to this, but I'll just try to answer

yes or no.
THE COURT: If you can without misrepresenting or being inaccurate.
Q Just to make sure we're on the same page, where the initial term says "owned," it means both the hotel property and the entity that manages the property are both Trump Organization entities and it is a related party transaction, correct?
Yes.
Q nd for those properties where instead of saying "owned," it is a number of years under column C, that would be a situation where the Trump entity manages the property, but the property is owned by another company?
I'm going to say yes. I just see one example on there where there is co-ownership, but I understand what you're saying.
Q On row 16, it says, "Value of existing portfolio and then there is a figure of almost 119 million for the value of existing" -- does that total for the value of existing portfolio include the value of management agreements for the related party transactions?
So you would have to go to the second tab and you could see that is a projection for all the hotels and all the hotels because there is a management agreement assigned -- there is a management agreement contemplated and assigned I believe that rolls up to the top sheet.

Q So is the answer to my question yes?
Can you say your question one more time?
Q Sure. The figure of 1 -- almost 119 million for existing value of existing portfolios includes the related party transactions as well as the hotels that are either entirely owned by some other entity or there's some co-ownership?
MR. KISE: Objection, Your Honor. It is a compound question. He's asking him two different things. He's already answered the first part of the question. He already explained what the 118 figure is derived from by reference to the cash flow projection, but now Mr. mer is asking him a different question that's compound which is trying to combine the cash flow with the value of the hotel either owned or on the other hand entirely owned or some other entity. That's a very different question.
MR. MER: I think I'm asking him the same question and just asking to summarize the upshot of what he just already said.
MR. KISE: Then it has been asked and answered. There is no reason to summarize it. He already answered about where the 118 came from. He told you exactly where it came from. I know what Mr. mer is trying to do and I am not going to say it in front of the witness and Mr. mer knows exactly what he's trying to do.
THE COURT: Mr. mer I will either ask for a

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readback. We, can all kind of decide whether it is compound question, or you can just ask differently. Up to you.
MR. MER: I'll try it more clearly.
Q Because you've looked --
THE COURT: You deem that withdrawn?
MR. MER: We can deem that withdrawn.
Q You looked at the second tab before in order to answer the prior question and now we are back to the summary tab. nd I just want to confirm that the value of almost 119 million which is listed as the value for existing portfolio includes all of the properties on the summary page that is above that row; is that right?
MR. KISE: Same objection.
THE COURT: sked and answered?
MR. KISE: Yes.
THE COURT: Overruled. I generally don't like that objection. You know, let him ask it again.
MR. KISE: He is asking a very different question and he knows exactly why.
THE COURT: If it is a different question, then it is not asked and answered.
MR. KISE: It is a misleading. If he is looking for clarification, then the clarification question is does the 118 million that's on that page, is that the sum of what's on --

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MR. MER: This is a speaking objection and it is not misleading at all. The witness can either understand it and answer it or tell me he can't understand it.
MR. KISE: He's asking if it includes a value of the properties themselves. That's what he's asking.
MR. MER: No, I don't think I asked that. I asked if it includes the existing portfolio for the properties above. I think it's fairly straightforward, Your Honor.
THE COURT: Just ask it again, but I don't see anything objectionable about it.
MR. MER: Can I get a readback on this one, Your Honor?
THE COURT: Yes.
MR. MER: Thank you.
THE COURT: We will all listen carefully.
(Whereupon, the requested portion of the record was read back.)
MR. KISE: Same objection.
THE COURT: There is no objection or it is overruled. Please answer.
Yes.
MR. MER: That wasn't so hard, was it?
Q In each year from 2016 through 2021 that you provided Mr. Birney with an updated spreadsheet, did you include the value of management agreements between Trump Organization

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affiliates as part of the value of the existing portfolio?
THE WITNESS: Is this one I can answer in a non-yes or no?
THE COURT: I think so.
THE WITNESS: Just in the nature of how this works?
THE COURT: I think you can answer yes, no.
Mr. mer, are you looking for a yes-or-no answer?
MR. MER: I am.
THE COURT: To me, it is a yes-or-no question. So, please, answer yes or no.
Can you restate the question again?
Q In each year from 2016 through 2021 -- actually, I'll revise that because I think you said you only did it back to 2017. In each year from 2017 through 2021 that you provided Mr. Birney with an updated spreadsheet, did you include the value of management agreements between Trump Organization affiliates as part of the value of the existing portfolio, yes or no?
Yes.
Q nd so you did include related party transactions in each of those years then?
There's value to those transactions, yes.
Q nd let's pull up the 2021 Jeff supporting data which is Exhibit 1352 in evidence. Let's go to row 1117. You'll see under ^ /HR-PBGS deals in this row, it says, "management company valuation" and for the June 30, 2021 column, there's a

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value of 118.9 million. Does that appear to you to track your spreadsheet value?
Yes. I'm not familiar with this sheet. However, that appears to be the same number.
Q So this appears to be the number you provided to Mr. Birney in your update, the spreadsheet under total value of existing portfolio, correct?
Yes.
Q Now, if we could go back to your spreadsheet, the other exhibit, sorry, which is 1308 native. You see row 18 says, "Value of future portfolio, N/ ." What does that mean?
That's none or non-applicable.
Q Was there a decision made to remove the value of future portfolios from this spreadsheet?
I think as of this point in time, there was nothing in the pipeline that was to be future developed as compared to previous years when there were future developments on the horizon and evidenced by HM s.
Q Well, let me just understand because row 18 doesn't have a zero value. It has an N/ . So was it -- to your knowledge, was it a determination made that you no longer needed to provide a value for future portfolio as opposed to --
No.
Q Let me just finish my question -- as opposed to there being zero value to future portfolio?

In this example from 2021, there is no future portfolio to value.
Q Why is that?
Because there is no future other developments or hotel developments from this point going forward.
Q So the Trump Organization ceased developing new hotel projects?
No, but the frequency was less than in previous years.
Q Did Mr. Birney tell you that you didn't need to put any value in for future portfolio, if you recall?
I don't recall.
Q Let's look at the second tab which says, "cash flow projection." Can you describe generally what's reflected under this tab?
This is a summarization for each property by year of a calculated management fee.
Q Is this management fee based on the management agreement?
I believe in most cases, yes.
Q Let's look at rows 141 to 145. So it says, "141 Trump cash flows from hotel operations "and then there is a series of numbers. What does that reflect?
I have to click on the formula to refresh my memory of this.
Q Why don't we click in B141. I don't know if that's

going to help you.
I don't see anything. There is a formula up there. Do you see the formula bar. It just says equals B138. So then can we go to B138.
Q Does row 141 reflect the cash flows from the managing agreements, the management agreements?
I'd have to work through the formulas and see what's in B138.
Q Why don't we click on B138 and the witness can see the formula?
Okay. So 133 would be the summarization of revenue list. B136 which is an approximation of management company expense. So if you go to B133, could we just see that that's a summarization of the numbers above it.
Q What is 142, row 142? What does that reflect?
Time value of money.
Q Why do that calculation?
Because a dollar today is worth more than a dollar in the future.
Q nd how are you adjusting the cash flows for inflation as it is indicated here in row 142?
Looks like three percent.
Q What is reflected in -- well, so is row 143 then the calculation that takes the number from 141 and discounts it for inflation?

Correct.
Q nd then what does row 144 do?
It appears to apply a discount factor.
Q Why is a discount factor being applied?
I didn't set up the template, so I'm not familiar; but generally speaking, it is to apply some factor of the risk of not all the management fees being collectible or realizable.
Q Is row 145 then a product of taking 143 and applying your discount factor in row 144?
Yeah. If we can click in B145, you could probably see that.
Q nd that confirms it?
Yes.
Q What does the present value of the Trump cash flows represent?
That appears to be the gross number adjusted for the discount factor and the inflation factor.
Q nd why does this spreadsheet calculate the present value of the Trump cash flows?
gain, I don't know the purpose, end purpose of this spreadsheet; but from my doing it over several years and putting in the inputs, my understanding is, again, if you're cash flowing out into a future period, if you want to get a value as of this point in time, you need to apply present value concept to get a value as of the point in time of the analysis.

Q Is applying an inflation factor and discount factor to get a present value for future cash throw something that you knew how to do at least as far back as 2016 when you joined the Trump Organization?
I'm familiar with the concept.
THE COURT: That didn't answer the question.
Q Right. My question is a little different. It's more specific. Was applying an inflation factor and discount factor to get a present value for future cash throw something you knew how to do at least as far back as 2016 when you joined the Trump Organization?
MR. KISE: Objection.
Yes.
MR. KISE: Inflation and discount are two different things.
THE COURT: I think the question acknowledged --
MR. KISE: He's asking about the discount factor, that's fine; but inflation throws a different element into it. Inflation -- accounting for inflation is very different for inflation for a discount.
THE COURT: That doesn't negate the question, so --
MR. KISE: It is a compound question. It is asking him two different questions.
THE COURT: No, he is not. He's asking one question about two factors combined.

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Is that correct, Mr. mer?
MR. MER: Yes. Yes.
THE COURT: Overruled.
Do you need a readback or you know the question?
THE WITNESS: I could answer the question as yes.
Q Thank you.
What do rows 147 to 149 reflect?
I would need to see the formula in B147. Can that be double-clicked to see if there are cells that show what it is pulling?
Q He double-clicked. I don't know if you needed him to do something else.
I can't see the highlighted rows at the end to see what it is doing. My presumption is it is totaling.
Q What is a reversion analysis?
To be honest, it was on the template when I inherited it.
Q Can you confirm that the value in 149 is the total value that then feeds back into the summary page?
Let me see the summary page.
Q Sure.
So that's 118 and the other one says 139.
Q No -- I'm looking at row 149.
Oh, the ^ 118,194?
Q Yes.

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Then go back there. Yes, sir.
Q I would like to look at an earlier spreadsheet you sent to Mr. Birney. Let's pull up Exhibit 1218 -- the native. ctually, let's go to the document first and then --
THE COURT: Five-minute warning.
Q Mr. Hawthorn, do you recognize this as an e-mail exchange you had with Mr. Birney where you're providing him with the updated spreadsheet in 2018?
Yes.
MR. MER: I'd ask that this be admitted into evidence, Your Honor.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1218.)
Q The bottom e-mail from you to Mr. Birney, down a little bit more, the bottom of the first page. You indicate, "Soho was in last year's file, not in this year's." Can you explain that?
Trump Soho is a hotel under management that the owner bought out the management agreement in 2017. So if in a previous version there was a value probably ascribed in the management contract, it would no longer be in a future year because the cash was already realized from a sales transaction under the HM .
(Continued on the next page.)

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Q nd then in the e-mail response from Mr. Birney he says, "okay, great. Please send worksheet that's synonymous with the spreadsheet we've been looking at;" is that correct?
Yes.
Q nd then he says, " llen is okay with the figures."
Do you know who he was referring to?
It appears to be llen Weisselberg.
Q Do you have an understanding how Mr. Weisselberg could be in a position to be okay with the figures before you send your spreadsheet?
No.
Q Was there any, you know, high level of summary of the numbers that was provided in advance of sending the spreadsheet to your recollection?
No.
Q So sitting here today you don't have any understanding as to how Mr. Weisselberg could be okay with the figures without having gotten your spreadsheet; right?
Yes. I can't make any context comment of that. ll I did was put in the numbers in the spreadsheet for Patrick and send them to him.
Q nd then, of course, the top e-mail is your forwarding the spreadsheet; correct?
Yes.
Q Just at the risk of wanting to clarify, am I correct

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that you did not have any understanding when you received this request and then sent the worksheet why Mr. Birney was asking for it; correct?
Correct.
Q nd you did not know how he was going to use the spreadsheet; right?
Correct.
Q My next questions are on the worksheet, so if we want to take our break now, does that make sense?
THE COURT: Yes. But just before you go, I want to address Mr. Kise's objection on the compound question.
If the question is was the building made of brick and was the temperature cold, that's a compound question, requires two answers. If you ask are you able to do and B, only if you can do and B, should you answer yes. If you can't do either, you can only do one, you shouldn't answer no. So that's why I regard it as a single question. But I see your point.
Okay. Let's take our usual ten-minute break over the course of 15 minutes.
(Whereupon, there is a recess in the proceedings.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
MR. KISE: Just a quick housekeeping, Your Honor. I'll let Mr. mer answer the question about of how long he's

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going to go. We just wanted to know if he's going to be -- can we let Ms. Kidder go and start her for 15 minutes? It's up to you.

THE COURT: What do you think we should do?

MR. MER: I think I probably have a half an hour. I'm fine if the Court is okay to not start a witness for 15 minutes if that's where we end up, but that's entirely Your Honor's --

THE COURT: I like to use every available moment, but a half hour, let's start her, if that's okay.

I assume no cross examination of this witness at this time?

MR. KISE: No.

THE COURT: I shouldn't have asked in the negative. I should have asked you were you planning on any cross examination. Hoist by my own petard.

MR. MER: I should mention my time estimate did not include any objections from Mr. Kise.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: Would Mr. Kise ever object? Let's see if we can move things along rapidly.

Okay, let's continue the examination of Mr. Hawthorn.

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Q Mr. Hawthorn, we were discussing Exhibit 1218, your e-mail where you forward the spreadsheet in September of 2018. So let's go ahead and pull up this native Plaintiff's 1218, which is the spreadsheet.

MR. MER: Your Honor, I ask that this spreadsheet be admitted.

THE COURT: Granted. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1218 in evidence.)

Q Do you recognize this as the updated spreadsheets you sent to Mr. Birney in September of 2018?

Yes.

Q Now, I notice the first two tabs "summary in cash flow projection" are the same as the 2021 spreadsheet we saw; correct?

Yes.

Q nd let's look at that first tab, the summary tab. For this spreadsheet there is a value of 45.2 million roughly on Row 25 for a value of future portfolio. Do you see that?

Yes.

Q So that's different from what we saw in 2021 where it said N/ ; correct?

Yes.

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Q So can you describe for us what the future portfolio that is reflected at a value of 45.2 million was?

So by comparison to 2021, 2018 had a lot of deals in the pipeline, so to speak, HM s that were signed for hotels to be opened, letters of intent or LOIs that were signed for hotels to be opened. 2018 was a much different dynamic than 2021 and in particular you see there was two other brands that the Trump Hotel divisions had launched and was under development, so those were included in this analysis.

Q I just want to follow up on something. You mentioned about deals in the pipeline. I think you said LOIs, letters of intent. Can you just describe that to me what that is?

That's an agreement between parties for a hotel development or a management agreement.

Q But it's not an actual signed management agreement; correct?

Correct. It's probably like the first step in agreeing that you will work towards getting an HM , but that there is interest by both parties and kind of documents the basic terms of the, you know, arrangement.

Q nd is it correct to say that some LOIs result in a management agreement and some do not?

Yes.

Q Were there also deals in the pipeline that were reflected only in discussions with the hotel owners as opposed

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to an LOI?

I don't know unless we look specifically.

Q Okay.

In that aspect I would defer to my boss at the time, Mr. Eric Danzinger, the CEO of the group.

Q Now, in addition to those first two tabs that we looked at, there are additional tabs that follow existing I projections, future deals, fee projections, new openings, and new signings. Do those all relate to the future portfolio?

Not the word "existing," but the one that says "future" would.

Q Okay. Do you know why there was no existing I projections tab in the 2021 spreadsheet?

I think it was at that time that it was concluded that that brand would no longer move forward whereas in 2018 it was very much a real thing.

Q nd why don't we discuss that tab "existing I projections." What is that?

This was a concept for an merican Idea hotel brand, which is a franchise hotel brand concept that was brought to market by the Trump Hotels team in 2016 and a concept that would have a different level of service versus a luxury Trump Hotels product.

Q nd is it your understanding then that this -- the information on this tab would flow into the existing portfolio?

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I don't know. We'd have to see where it links, but existing I projections I can tell you that these hotels did not open ultimately, but at the time there were signed hotel management agreements. There was a lot of work done by the hotel team to gather up this brand franchise concept and so it was very much a real thing during 2018.

Q I guess it's just a simpler question as to whether it's part of the existing portfolio or the future portfolio, if you know?

I would -- I would presume future because it's not open. My understanding is that existing is that there is a hotel that's operating versus future which is to open.

Q Let's look at rows -- under -- let's look at the next tab, "future deals fee projections," Rows 23 to 28. Can you tell me what those reflect?

I guess they were projections at the time this was prepared of future hotels. If you -- I did go -- if you scroll up.

So you see in Row 5 there is another place called Scion. That was a lifestyle brand of hotel division that the brand was also launching at the time of merican idea. So you had three brands. You have the Trump Hotels luxury brand, upper at the high end of the market Scion, more of a lifestyle hotel four star and merican Idea being a franchise model hotel.

Q nd I guess my question's more specific to Rows 23 to

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28 which ends with Row 28 being present value of Trump cash flow. So is this similar to what we saw before where you're doing a calculation to include inflation and then a discount factor to get to present value?

Yes.

Q nd does doing this type of calculation have any relationship to getting to an estimated current value for the management contracts?

Yes.

Q In what way?

So conceptually it looks like it's taking the expected cash flow streams from management fees and future years and discounting them back to current time of this evaluation.

Q nd that gets you to estimated current value?

Yes.

Q Let's look at the new openings and new signings tabs. So what are new openings?

This I believe is a tab to estimate the opening dates of new properties and the year they would open.

Q nd starting in Row 12 through Row 28, you'll see it says "TBD" under "property." What does that stand for?

That would probably just be a placeholder, to be determined.

Q nd in some rows the number of keys is zero, but in others it's 250. Why is there that difference?

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Can you show me the 250?

So this could have been based on the pipeline and trend of new development, the expected opening of hotels with 250 keys in those particular years.

Q Is number of keys synonymous with number of rooms in the hotel?

Yes.

Q nd let's look at the new signings tab. gain, you'll see that starting in Row 9 all the way through the rest of the entries under "property" it says "TBD" again. What does that signify for this tab?

It's a placeholder again. Same thing, to be determined.

Q nd again, in some rows the number of keys is zero and in other rows it's 250. Same answer as a prior tab?

So, again, a presumption that the average number of keys of a new hotel development would be 250 that the brand would sign these developments in these years and they would open thereafter after a period of preopening.

gain, these based off of signed hotel management agreements, signed letters of intent and/or updates from the CEO of Trump Hotels and the work that was being done by the development team of future properties.

Q nd just the last part of your answer where you say "updates from the CEO of Trump Hotels" that's Mr. Danzinger?

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Yes.

Q nd by that do you mean to include discussions that he's had with property owners?

He would have had those discussions but we would have asked his input on this projection.

Q I'm just trying to identify the bases for including him in the spreadsheet. You said signed hotel management agreements, signed letters of intent and then you describe this third category of updates from the CEO. So are the updates something different than LOIs and management agreements?

I can't speak to it because he was closest to the information, but, like, just as an example, if you are going to open a new hotel with one owner and you have a signed HM , that hotel owner may say I want to do three more, five more, ten more hotels with you and these are all ready to go. So that could be an example. But in this particular case from 2018 it's hard to remember or know.

Q t least your understanding is that some of these TBD deals are management agreements, some are LOIs and some may be something else. Is that fair?

I think that's fair.

Q nd the something else would be not anything in the form of a signed agreement; correct?

It could be -- again, I defer to the hotel group CEO at the time who had the connections, who had the wherewithal to

know the realistic possibility of new hotels.
Q Well, you are updating the spreadsheet; right?
With his input. I wasn't the development guy at the time nor am I now.
Q nd so at least your understanding based on what you are being told was that some involved letters of intent and some involved something other than a letter of intent or a management agreement?
To the best of my recollection, yes.
Q Okay. Now, if we go to the new openings tab and we look at Row 37 that you see lists 250 keys; is that right?
Yes.
Q Now, if we look at the formula for Row 37 Column D. If we can click on that.
Do you see that the formula says "equal", quote, "new signings", closed quote, exclamation mark, D 34?
Yes.
Q So does that mean that this number is being pulled from the new signings tab?
I think there was a cadence to this, meaning that if a new deal was signed and you can go to that tab of where it was, like, what year -- like, say, for example, if that D 34 on new signings was 2020, then it took, you know, whatever the cadence of number of years to go from signing to opening, so I believe they're related.

Q Well, just a very simple question about what this formula signifies as a matter of using an Excel spreadsheet. This formula means that you're pulling the number from the new signings tab at D 34, doesn't it?
Sure. Can we see what it is?
Q Sure.
New signings D 34.
MR. MER: 34, not 24.
Okay.
Q So this D 34 is the sum of E 34 to L 34; correct?
Yes.
Q nd then the new openings tab is pulling the number from this tab into that tab; right?
Yes.
Q Okay. So let's go back to new openings.
Now, if we click on the next two, Row 38 D, same formula; right? You have to answer.
Yes.
Q nd the one below that?
Yes.
Q So -- and I've looked at all of these in this column and every single one of these formulas is pulling the number from the new signings tab. Does that sound right to you?
Okay, yes.
Q So all of the number of keys information in the new

openings tab is just being pulled from the new signings tab; correct?
Yes.
Q Okay. Now, let's go to the future deals projections tab. nd in the Scion -- is it pronounced Scion?
Yes.
Q The Scion section. Let's go to Row 7.
See it says "total keys?" In Column G for 2022 it says "1250." So what does that represent?
That would be the room count of the openings of hotel in 2022 projected from 2018.
Q Okay. nd if we look at the formula for that cell it says it's F 7, which is 2021 plus the sum of new openings H 6 to H 81. Do you see that?
Yes.
Q Okay. But we've already established that all of the figures in the new openings tab are being pulled from the new signings tab; correct?
Right. You have to sign a hotel deal before you open it.
Q Okay. I'm just trying to understand the relationship between these three tabs and the future deals fee projections for the number of keys in Row 7 is being pulled from the new openings tab which in turn gets pulled from the new signings tab; correct?

Correct.
Q Okay. Can you walk us through the calculation in Column G to explain how the number of keys is being used, if at all, to generate the total revenue figure?
Let's go to room revenue in G 12 and see how that's derived. Right so you would take the total number of rooms times the number of days in the year and you would assume an occupancy rate that is how full the hotel is with guests.
So if you took 1250 times 365 you get 465,000. Presuming there is 70 percent occupancy you'd have an occupied room nights of 319,000 times an average rate of $450 is the room revenue in this file.
Q nd again, the total keys includes potentially new signings that are at the moment either could be a letter of intent or something else?
No. It only includes new openings, right. That's what the formula says.
Q Okay. But we already discussed that new openings is pulling the number from the new signings tab; correct?
It is, but --
Q Okay. nd that Column G calculation then feeds into the summary tab for future portfolio; correct?
It should I guess if we follow the formula through.
Q Well, just conceptually that's what you're doing; right? This is part of --

Correct. Same analysis as the one before conceptually.
Q Okay. So I'd like to summarize a few basic points and then ask you a handful of final questions.
We've established that you are a CP with knowledge of G P; correct?
Yes.
Q nd we've established that you know how to do a discounted cash flow analysis to calculate present value of future cash flow; correct?
Yes.
Q nd you've worked on compilation engagements for the Trump Organization; yes?
Yes.
Q nd you understand the concept of stating assets in a compilation at their estimated current value; correct?
MR. KISE: Objection. Is he an expert? We're back to that again?
MR. MER: I'm just setting the stage and this is the last background question.
MR. KISE: He hasn't testified to that previously. If he's summarizing previous testimony, he hasn't testified to that previously.
MR. MER: I think he has testified to what an estimated current value is.
THE COURT: I don't think he's asking technical

questions about G P. He's asking what he did, what he understands, so overruled. You want to just ask that last question again?
MR. MER: Sure.
Q nd you understand the concept of stating assets in a compilation at their estimated current value; correct?
Yes.
Q t any point in time during the course of your employment at the Trump Organization did either Mr. Weisselberg, Mr. McConney or Mr. Birney ask you to work with them on preparing Mr. Trump's Statement of Financial Condition?
No.
Q If any of them had asked you to work with them on preparing Mr. Trump's Statement of Financial Condition, would you have had the knowledge and experience to do so?
Yes.
Q If at any point in time between 2016 and 2021, Mr. Weisselberg, Mr. McConney or Mr. Birney had asked for your assistance in calculating the present value of future cash flows to estimate current values for Mr. Trump's Statement of Financial Condition, would you have been able to provide such assistance based on your knowledge and experience?
Certainly would have tried my best.
Q Do you believe you would have been able to do so based on your knowledge and experience?

Be qualified to give it a try.
Q Is that a yes?
Yes.
Q Did Mr. Weisselberg, Mr. McConney or Mr. Birney ever ask you for such assistance?
ssistance in?
Q In calculating the present value of future cash flows to estimate current values for Mr. Trump's Statement of Financial Condition.
Not directly, no.
Q If at any point in time between 2016 and 2021, Mr. Weisselberg, Mr. McConney or Mr. Birney had asked for your assistance in addressing issues of G P compliance for Mr. Trump's Statement of Financial Condition, would you have been able to provide such assistance based on your knowledge and experience?
Yes.
Q Did Mr. Weisselberg, Mr. McConney or Mr. Birney ever ask you for such assistance?
No.
MR. MER: That's all I have, Your Honor.
THE COURT: ny cross at this time? No? Okay. The witness is excused. Thank you.
(Whereupon, the witness is excused from the witness stand.)

THE COURT: nd the next witness?
Transcript continues on the following page....

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THE COURT OFFICER: Witness entering.
D O N N K I D D E R , a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:
THE COURT OFFICER: State your full name and home or business address for the record.
THE WITNESS: Donna Kidder. 721 Fifth venue, New York, New York 10022.
THE COURT: Now, that's a nice, loud voice, right. Keep at that level and please commence the direct examination.
DIRECT EX MIN TION
BY MR. H REN:
Q Good afternoon, Ms. Kidder. Good to see you again. Can you, please, describe your educational background after high school.
Some college.
Q Do you work at the Trump Organization?
Yes, I do.
Q What is your title there?
ssistant controller.
Q When did you join the Trump Organization?
March 2007.
Q nd what was your position when you joined the Trump Organization?

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Senior accountant.
Q Who was the chief financial officer of the Trump Organization when you joined the Trump Organization?
llen Weisselberg.
Q nd who was the controller of the Trump Organization when you joined the Trump Organization?
Jeffrey McConney.
Q What was the assistant controller when you joined the Trump Organization?
Eric Sacher.
Q nd who did you report to when you started at the Trump Organization?
Eric Sacher, Jeffrey McConney and llen Weisselberg.
Q Did there come a time when Eric Sacher left the Trump Organization?
Yes, there did.
Q t some point after Mr. Sacher left the Trump Organization, did you become the assistant controller?
few years after that.
Q Did that occur approximately in 2010?
pproximately.
Q Can you describe in general terms what your responsibilities have been as assistant controller?
Cash management, overseeing a staff of approximately six at any different time, cash flow reports, condominium cash

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flow reports, budgeting for commercial properties.
Q nd what do you mean by cash management?
Every Monday, you just -- if outside properties needed funding, I would compile a report and I would fund them as necessary and report on all of the owned entities' cash position at that time.
Q nd when you say "outside properties," what are you referring to?
Golf course, hotels.
Q So if I have that correct, every Monday you would prepare a report about the cash position of the golf courses and hotels?
No. May I elaborate?
Q Sure.
So the owned entities, everything would roll up to them and if the other entities needed funding, they would request it through me.
Q nd what do you mean by owned entities?
The trust owns everything, so you have the trust is where all the cash sits, the money sits with DJT Holdings.
Q nd if what you describe as outside entities need funding, they would ask you?
It would go through me and then the -- it would have to be approved by either llen Weisselberg at the time or Ron Lieberman who was also in charge of the golf courses and Patrick

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Birney.
Q nd you say "at the time." Did there come a time when Mr. Weisselberg stopped being involved in that process?
When he pled guilty to tax fraud.
Q Okay. In your role as assistant controller, do you think of some entities as having their accounting work done in-house?
Yes.
Q What is the phrase "in-house" refer to in the context of that work?
The corporate office and it would be billing, accounts payable, budgets.
Q nd which entities have their accounting work done in-house as you understand that term?
40 Wall Street, Trump Tower Commercial, the various owned retail and residences, Trump Park venue.
Q When you say "owned retail," what are you referring to?
In condominium building such as Trump Park venue, L.L.C. There are sponsor-owned units that are retail, so we would maintain the books and records there, the leasing.
Q nd I think you described these as outside entities a minute ago, but were there entities that did not have their accounting work performed in-house?
Yes.
Q nd which entities were those?

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ll of the hotels such as the Doral, Trump Old Post Office, the hotels and golf courses overseas, and all of the golf courses that we owned, Colts Neck, DC, The Vineyard, their books and records were kept outside.
Q nd did those entities have their own controllers?
Yes, they did.
Q Did those entities have a procedure for providing their cash position to you regularly?
Yes, they did.
Q How often did they provide their cash position to you?
They were instructed to provide it every week whether Friday by 5:00 or Monday morning.
Q You say "were instructed." Instructed by whom?
By me.
Q nd for the entities that did not have their accounting work performed in-house, did their cash position reports ever request cash?
Occasionally, they did.
Q nd was there an approval process for those cash requests?
Yes, there was.
Q nd whose approval was needed for a cash request to be granted?
llen Weisselberg at the time.
Q nd can you describe the process by which his approval

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was obtained?
The e-mail would be sent while he is still working in the accounting department. I would compile the report and we would discuss who needed financing and for what purposes. He would okay it. I would then fund the golf course or the hotel, what have you, each entity.
Q nd where would the funding typically come from?
From an owned entity. Prior to Donald Trump becoming president, it would have come from him directly. fter that, the structure was the trust, Donald J. Trump Revocable Trust.
Q nd did an entity called DJT Holdings, L.L.C. play any role in that process?
Yes, the structure was the trust, DJT Holdings, L.L.C. and occasionally, there was a third entity after the Holdings called DTTM, L.L.C.
Q nd for entities that did not have their accounting work performed in-house, did they ever distribute cash higher up in the hierarchy of Trump Organization entities?
Yes.
Q Can you describe the process by which that occurred?
Well, they would have a profit and they would get approval to distribute cash to the owned entity.
Q nd prior to Mr. Trump becoming President of the United States, would that cash be distributed up to him?
There might have been an entity in between, but

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ultimately, he was the only owning beneficiary.
Q Subsequent to him becoming the President of the United States, was there an ultimate endpoint for those cash distributions?
The trust.
MR. H REN: Let's put up on the screen Plaintiff's Exhibit 1306.
Q Ms. Kidder, do you recognize this document?
Yes.
Q What do you recognize it to be?
It appears to be the budget projection for 2015 for 40 Wall Street.
MR. H REN: I would move this document into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Understood. Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1306.)
Q Let's move to PX 1306 native one.
Ms. Kidder, the document on the screen, do you recognize it?
That's the spreadsheet for the projected budget for 40 Wall Street.
MR. H REN: I move this native file into evidence.
MR. ROBERT: Same objection. I thought it was all

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part of the one exhibit anyway.
THE COURT: I thought so, too, but it is all in. It is all in evidence.
MR. H REN: ll right. We have had a practice of doing the native files separately, so I just want to make sure that if there is a -- if someone moves in evidence an e-mail that has native files attached, that the whole exhibit will come in. Is that correct?
MR. ROBERT: Why don't we just take it as it comes, but at this point, I thought it was all coming in as to this exhibit; but my same objection, Your Honor has already ruled is coming in.
THE COURT: Right. We will do it ad hoc.
MR. H REN: Okay.
Q Ms. Kidder, before asking you about the document, just can you describe Mr. Weisselberg's involvement in the 40 Wall Street budget process?
Yes. He would have the final review after everything was compiled. The operational expenses were compiled by Matthew Calamari who is the COO and the building manager, I believe, in 2015 was Steve LaFiosca (ph). By operating expenses, I mean anything that was relevant to operating the building. For example, I want to say messenger and delivery because that's all I see, but also payroll. If you go down, contracts, anything like that. For real estate taxes, we would have reached out to

Marcus Pollack (ph) for projection and he would have provided that. For the ground rent, there's actually an agreement. For the income, I would have prepared an income projection by any lease that was already in place. There are no assumptions in this. He would have -- llen Weisselberg would have reviewed everything as well as Matthew Calamari would have reviewed everything and they would have tweaked or questioned or changed any numbers that they felt were too high or too low operationally. For the income, it was what it is. So it was what it was, I should say. So if there was a lease, it was in the income.

Q So just speaking generally, the time period from 2011 to 2021, what was Mr. Weisselberg's involvement in the 40 Wall Street budget process at a very high level?

Final approval.

Q Do you have an understanding of the figure in cell Q151 down to 153?

15 -- so 151?

Q Excuse me. It is O from 151 to 153.

So 0 151 to 153. Would you move it over a little, so I could see the titles --

MR. H REN: Zoom out a little bit. It is a very wide spreadsheet.

Yes, I know, unfortunately. ll right. So there are a few different totals here. You would have the NOI before debt

service, after debt service in Capex. The final number is -- in some months, it is a profit and in others it is a loss, but ultimately for that year, it was projected a loss of $4.1 million.

Q nd that's the -- scroll back to the left.

That's a total NOI after debt service and Capex?

Yes.

Q nd Capex refers to capital expenditures?

Capital improvements, tenant improvements, lease, any leasing commissions. It looks here -- it is just a whole number. It is just one building improvement number. The capital improvement is just one line and that's for building improvement. That's what that code is.

Q So speaking in reference to the negative $4.17 million number, in your experience, if a business within the Trump Organization has negative income after debt over the course of a year, does someone have to advance money to the business?

Yes.

Q Who does that?

The owning entity.

Q So does that mean prior to Mr. Trump becoming president, he would advance the money?

That's correct.

Q fter Mr. Trump became president, the trust would advance the money?

That is correct.

MR. H REN: Let's go to Plaintiff's Exhibit 1078.

Q Ms. Kidder, I'll direct your attention to the bottom of the first page continuing on to the second page. There is an e-mail from you to a person named Joseph Piantedosi copying Brian Lynch and Jeff McConney with the subject "re TNGC Westchester cash position." Do you see that?

I do.

Q Do you recognize this document?

Yes, I do.

Q What do you recognize it to be?

This is the first time it appears that Jeff instructed a controller to pay a management fee and have it hit the books instead of just a journal entry.

MR. H REN: I move this document into evidence.

THE COURT: Granted. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1078.)

Q Looking at the e-mail on December 23rd of 2016, the e-mail states -- it has a subject of, TNGC Westchester cash position and it says, "Hi, Donna. I have attached the cash position for the club. We are positive we will be able to meet the payroll for next week with the existing funds." Do you see that?

Yes, I do.

Q Is this e-mail an example of what you called an outside entity sending you a cash position update?

Yes, it is.

Q This is the time of e-mail you would receive weekly from those outside entities?

Yes.

Q Is it typical to sweep funding from operating entities within the Trump Organization?

Yes, it is.

Q Why does that occur?

Because we don't like to keep too much excess funds at entity level. Instead, we sweep it up to the owning entity for investment.

Q nd can you just describe in a little bit more detail what you mean by "sweep up to the owning entity"?

Well, if the golf course here had excess operational funds, he would issue a distribution to the owning entity.

Q nd ultimately, I think you described the process, but for some entities or -- excuse me. Before Mr. Trump became president, the distribution would ultimately go up to him; is that correct?

Correct.

Q nd after he became president, the distributions would go up to the trust?

Correct.

Q I'm looking on page one on to page two of Plaintiff's Exhibit 1078. I think you mentioned this already. It states -- excuse me. It is the top of page two. It states, "I will be sending 405,388.38 which in turn you need to send right back as a 2015 management fee". Do you see that?

I do.

Q nd was there a reason that before the end of the year in 2016 there needed to be a monetary transfer of an amount for a management fee from the TNGC Westchester?

Sorry. Can you just repeat that question? I didn't hear the first part.

MR. H REN: Sure. Can I have a readback, please, Your Honor.

THE COURT: Read back, please.

(Whereupon, the requested portion of the record was read back.)

They didn't have enough operating cash left over at the end of the year.

Q So you needed to send them $405,000 and change and have them send it right back as a management fee?

Correct.

Q Did you have an understanding how 405,388 was calculated?

Mazars calculated the management fee based on the gross profits at four and-a-half percent.

Q Was it four and-a-half percent of gross revenue or four and-a-half percent of gross profit?

Revenue.

Q Let's move to Plaintiff's Exhibit 1133. Ms. Kidder, in reviewing this document, if you could turn to page three and review up from there. That might be easier.

It looks to be a couple of documents in one, but yes, I recognize it.

MR. H REN: I move this document into evidence.

MR. ROBERT: I want to make sure this is one chain of e-mails. The witness said it looks like it is several together.

MR. H REN: It was produced to us like this.

MR. ROBERT: Sorry? In hard form or electronic form?

MR. H REN: In the form in which it exists here.

MR. ROBERT: So that means it is one e-mail exchange.

MR. H REN: It means it is a series of e-mails and one chain that has the items on the last page. They kind of stack up.

MR. ROBERT: Okay.

THE COURT: So we treat it as one document. Is that agreed?

MR. ROBERT: I just wanted to make sure that it is

one exchange in the e-mail because of the witness' answer.

THE COURT: Granted. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1133.)

Q Ms. Kidder, directing you to page three of the document, in the middle of the page, there is an e-mail from Jennifer Minton to you with the subject "Charlotte funding request 12.23.16." Do you see that right there in the middle of the page?

Yes, I do.

Q Who is Jennifer Minton?

She is the controller for the golf course in Charlotte.

Q Do you understand the subject "Charlotte funding request" to refer to the sort of weekly cash reports that you mentioned earlier?

Yes, I do.

Q On page three, you asked her "Out of the 531K, can any of that be considered as a distribution to DJT"?

Yes, I see that.

Q What did you understand that to refer to at the time?

In this e-mail, there would have been an attachment which would have been her cash position. I asked if any of her cash balance could be considered a distribution.

Q nd so that refers to the process you described earlier of seeing if there is excess cash left in an operating entity?

Yes.

THE COURT: Five-minute warning.

Q Ms. Minton, the subsequent e-mail at the top of page three and starting from page two, she writes, "We have never done this transfer for the management fee before, so I guess it wouldn't matter what we consider it." Do you see that?

Which -- I'm sorry. Which one?

Q It is at the top of page two of the document. It begins with, "I had something come up unexpected yesterday and I'm out of the office today. I wanted to reply, sorry, but I am confused." Then it says, "We have never done this transfer for the management fee before, so I guess it wouldn't matter what we consider it."

My question is, did you understand Ms. Minton to have been asking you how to classify a management fee?

Yes.

Q nd your response on page two states, "It is a management fee. llen would like it below the line." Do you see that?

Yes, I did.

Q Is that llen Weisselberg?

Yes.

Q llen Weisselberg gave direction as to how Trump Organization golf clubs classified their management fees?

Correct.

Q nd what did you understand below the line to mean?
fter all of the operating expenses and the -- in the -- the first NOI, just as I showed you in -- on 40 Wall Street, they would have a report and it would have different NOIs before management fees, before Capex such as that. So that's what he means by below the line.
Q There would be a net operating income generated before the management fee was subtracted?
The NOI would be before the management fee, it would be higher and then after the management fee, it would be less.
Q In the e-mail, again, in the middle of page two, you stated to Ms. Minton, "He would like it recorded below the line. He also suggests that Ed already knows how to show it on the reports that are provided to W/Ron/Patrick, so he can advise." What did you understand that sentence to refer to?
Ed Raymundo is the controller at the Florida properties in Mar- -Lago and he has been reporting this for years before Jennifer Minton was hired and she had never seen an entry like this on her books, so he was just going to show her how to do it on the golf reports.
Q nd what did you mean reports that are provided to W/Ron/Patrick?
Those are the monthly reports from the golf courses, profit and loss, income and expense, balance sheets.
Q So those monthly reports that you're describing, can

you be more specific about what they contain?
From what I have seen, it is a profit and loss statement, an income and expense statement, a balance sheet. There might or might not be management fees attached. They usually went direct to llen, Ron and Patrick.
Q nd these monthly reports contain income and expense information for each of the golf clubs in the Trump Organization?
Just the one they were responsible for. Each controller would submit their own reports.
Q So each of the controllers would submit a report with the income and expenses for their property?
Correct.
Q nd did you have an understanding that Patrick Birney -- you are referring to Patrick Birney, right?
Correct.
Q Did you have an understanding that Mr. Birney would then consolidate that information into a single report?
I don't know what he did with all of the reports.
Q Looking at page one of Exhibit 1133 and at the bottom of the page, you wrote "I sent you a separate wire yesterday so you can pay the management fee. (It also happens to be 531,903.42). Do you see that?
Yes.
Q Is this another instance in which you sent funding to a

club for it to immediately send it back as a management fee?
Yes, it is.
MR. H REN: I think that's a good place to stop for the day, Your Honor.
THE COURT: Okay. Hold on. s usual, ten o'clock tomorrow. Have a good evening.
MS. F HERTY: Your Honor, can you give an admonition to the witness before she departs not to discuss her testimony with anyone.
THE COURT: I hereby admonish you not to discuss your testimony with anyone.
THE WITNESS: Yes, Your Honor.
(Witness exits the stand.)
(Whereupon, the trial was adjourned to October 17, 2023 at 10:00 a.m.)

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$21.9 (1)
1361:1
$230 (1)
1373:4
$293 (5)
1447:16;1454:10;
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In The Matter Of:

NYS ttorney General v.
Donald Trump et al.

Donna Kidder, Douglas Larson
October 17, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

Original File NYS G vs Donald Trump_et al.-101723.txt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 37
----------X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

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
October 11, 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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Senior Court Reporters

THE COURT OFFICER: All rise. Part 37 is now in session. The Honorable Judge Arthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: I understand there is some photographers outside that want to come in for a few minutes, so look your best.

(Whereupon, there is a pause in the proceedings.)

THE COURT: They are the eyes and ears of the public, or at least the eyes in this case.

Okay. We're continuing with the testimony of Ms. Kidder; correct?

It takes a while to get the witnesses. They're sequestered or something. She'll be here eventually.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: I'll remind the witness, as I always do, that she is still under oath.

And let's continue with the direct examination.

CONTINUED DIRECT EXAMINATION
BY MR. HAREN:

Q Good morning, Ms. Kidder.

Good morning.

MR. HAREN: I'd like to put on the screen Plaintiff's Exhibit 1300.

THE COURT: And I'll ask both of the participants to keep their voices up.

MR. HAREN: Yes. Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION
BY MR. HAREN:

Q Ms. Kidder, do you recognize the e-mail on the screen?

I recognize my name, but there is nothing attached, so I'm not sure what it would be.

MR. HAREN: Sure. Can we take down that image and pull up the attachment that is PX 1300_native?

Yes, I recognize this.

Q And what do you recognize it to be?

That's a weekly cash report.

Q And can you explain what you mean by "weekly cash report?"

These are the owned entities and that is the cash position of disposable amounts. This is what we spoke of yesterday, the weekly cash reporting.

Q Can you explain at the top of the spreadsheet it states: "From Allen Weisselberg to Donald J. Trump dated December 29, 2016." Do you see that?

Yes, I do.

Q Do you have a practice of preparing spreadsheets like this at the Trump Organization?
I prepare it every week.
Q nd what is the purpose of this spreadsheet?
To show the cash positions of the entities that are holding accounts are owned entities, owning entities.
Q nd prior to Mr. Trump becoming president of the United States was the purpose of this document to allow llen Weisselberg to give Mr. Trump an update on the cash position of the entities contained in the spreadsheet?
Correct.
Q nd was that the -- can you describe the purpose of these spreadsheets after Mr. Trump became president?
It's still the same practice except it doesn't go to President Trump directly.
Q Okay. Thank you.
MR. H REN: Now, focusing on the e-mail, Exhibit 1300, and the spreadsheet, Exhibit 1300 native, I'd like to move those documents into evidence, please.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to are received and marked Plaintiff's Exhibit Numbers 1300 and 1300 native in evidence.)
Q Ms. Kidder, focusing on the spreadsheet, I'd like to -- there is a tab at the bottom titled "cash."

What -- actually, let me go back to a different question.
When were you first assigned the task of preparing weekly cash spreadsheets of this sort?
When Eric Sacher resigned and I was assigned this task.
Q nd that was in about 2008 as we discussed yesterday?
Correct.
Q Okay. I'd like to walk through Rows 11 through 26. Can you -- do you have an understanding of the information contained in those rows?
Yes.
Q nd what's your understanding?
The first line is a checking account at Capital One, the second is a money market account at Capital One. If you scroll over I could see if there is another column that says the name.
I believe that was personal. The other way. The other way. Okay.
So this was 2016 prior to President Trump becoming the president, so everything was still in his name as far as the Capital One account. It was not yet in the trust. That's his personal account. Capital One Money Market is his personal account.
Q Just -- without speaking specifically about the particular accounts, just as a general matter what is the

information reflected in Rows 11 through 126?
Cash position as of that day.
Q nd what is the relationship between that information and what you described yesterday as owner entities?
He's the owning entity.
Q nd so the cash flows up?
That is correct.
Q In Columns Q and S in Row 80, I'd like to direct your attention to some figures. Do you have an understanding of the information contained in Cell Q 80?
Yes.
Q nd what's your understanding?
It's the cash total of the lines above it.
Q nd how about R 80?
That's the restricted cash or investments.
Q nd S 80?
The available cash and investments.
Q So is the idea that there is a total sum as restricted and taking out restricted, what's in S 80 is what remains?
That is correct.
Q Okay. Can we turn to the tab of the spreadsheet entitled " W REC." nd first, do you have an understanding of the phrase W REC?
Yes. This was a spreadsheet llen Weisselberg created to fill in, so it's llen Weisselberg's reconciliation and as

the title states it's funding for the TU settlement.
Q nd what does TU settlement refer to?
Trump University.
Q Directing your attention to Row 36. Do you see the figure in G 36 of 16,567,203?
Yes.
Q Does that come from the cash tab that we looked at as the portion of the cash that was not restricted?
It should.
Q nd then I'd like to scroll or just look at Row 37 where it states "see and see above" and there is a figure of 5.6 million. Do you see that?
I see that.
Q Why are those figures subtracted here?
Would you be able to scroll up?
Q Sure.
I don't recall. This was awhile ago I did this spreadsheet.
Q Sure. We can take a look through.
Do you see that Item is 3.1 million in current cash?
Yes.
Q nd Item C is 2.5 million in M L/TIGC?
Yes.
Q Do you have an understanding of what M L/TIGC refers to?

That I do recall or understand. M L is Mar- -Lago, TIGC is the golf course in Florida and that would anticipate a distribution of that amount.

Q nd there is a heading of this section that states "funding for TU settlement" and there is a total in Cell G 10 of 25 million. Do you see that?

Yes.

Q nd do you have an understanding that the figures above 25 million are the sums of money that are funding for TU settlement?

Yes.

Q nd do you have an understanding of the Cell G 8?

Yes.

Q nd what's your understanding?

That was a Ladder Capital loan llen Weisselberg took out. I believe it was for Trump Plaza to add to the cash required to pay the Trump University settlement.

Q nd I'd like to go back to -- go down to Cell I 42. Do you see in Row 42 it states "projected cash liquidity" with an asterisk and there is a figure of 8,087,203?

I do.

Q nd in Row 45 there is an addition of 1,667,000 for PH 28 sale net?

I do.

Q Do you have an understanding of what PH 28 sale net

refers to?

That was the anticipated sale of penthouse 28, the net profit at Trump Park venue LLC.

Q So there is a projected cash liquidity in Cell I 42 and then the net from the sale of PH 28 of 1.667 and that sums to cell -- the number in I 46; is that right?

That's how it should add, yes.

Q Okay. Ms. Kidder, I'm going to shift to a different topic, 40 Wall Street budgets.

We spoke yesterday about the budget process for 40 Wall Street. How did that process work for other entities that you considered in house?

The only other entity that we actually prepared a budget for was Trump Tower commercial and it was exactly the same process.

Q nd can you explain more what you mean by "exactly the same process?"

Sure. So for the income based on the leases in place I would prepare the income projection for the budget year. For the expenses it would be Matthew Calamari. He would put that together if there were any capital improvements to the building. I would speak with Michael Calamari. Leasing commissions, whatever attorney was working on leases, if they had a number I would add that. We would work as a team and put the numbers together and then the budget, the projected budget, would go to

llen Weisselberg for approval and review.

Q nd that process was the same from 2011 to 2021?

Yes.

Q nd do you have an awareness of how the budget process works for club properties in the Trump Organization?

Not really, no.

MR. H REN: Let's move to Plaintiff's Exhibit 1295.

Q Ms. Kidder, do you recognize this document?

It says it's the 40 Wall Street 2011 Operating/Capital Budget.

Q nd do you recognize it?

It looks like something I would have prepared, yes.

MR. H REN: I move this document into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1295 in evidence.)

Q So I just want to start at the bottom in Cell R 108 and work up from there.

Do you have, Ms. Kidder, an understanding of the information in Cell R 108?

It's a loss for the year.

Q nd what's the amount of the loss?

$4,851,994.

Q I'd like to scroll up in the spreadsheet to the item

for interest expenses. Do you see in Row 22 it states "interest on mortgage?"

Yes, I do.

Q nd do you see that the amount is 9,288,267?

Yes.

Q nd elsewhere in the spreadsheet there is an expense for building improvements of 1.8 million. I think it's at the bottom. Do you see that in Row 106?

I do.

Q So I'm going to represent to you that if you start at a loss of 4,851,994 and you add back in the interest expense in the building improvements expense you get to a figure of 6,236,273.

MR. H REN: nd I think as in prior instances the Court can take judicial notice of the mathematical calculation.

nd I'd like to pull up on the screen Plaintiff's Exhibit 1573.

Q nd Ms. Kidder, I'm not going to ask you any questions about this document, but I just want to point out that some figures match.

MR. H REN: So could we go to page 138, please?

Q Ms. Kidder, do you see that under operating expenses --

MR. ROBERT: Objection, Your Honor.

THE COURT: Go ahead.

MR. ROBERT: The document is not in evidence because it couldn't be because it's hearsay and now he's reading from a document that's not in evidence, that can't come into evidence because it's hearsay, so I object to the question.

MR. H REN: I'm not offering it for the truth of the matter at this stage. We have another witness coming later who in fact prepared the appraisal. I just want to show and demonstrate the two figures match and move on.

MR. ROBERT: I still think it's hearsay nonetheless and even if you can subject it to connection later, it's still an inadmissible statement contained in the document.

THE COURT: Objection overruled because it's not being introduced to prove the truth of its contents, but I understand your point.

MR. H REN: Thank you, Your Honor.

Q Ms. Kidder, under "operating expenses" it reads: "We have analyzed the actual operating expenses for 2008, 2009 and 2010 and budget expenses for 2011 as provided by ownership."

MR. H REN: Just go to page 140, please.

Q So this is another table in the appraisal in the column that states "budget count CY 2011" and at the bottom there is a figure for net operating income that matches to the dollar -- the figure on the budget you prepared.

MR. H REN: I'm going to move into evidence now the -- not the appraisal, but the budget Ms. Kidder prepared because I haven't done that yet. I'd like to move --

MR. ROBERT: s to that in the previous one the statute of limitations, objection, Your Honor.

THE COURT: I understand that as a standing objection on the record and -- but the document is in evidence. Granted.

MR. H REN: Thank you.

Can we pull up Plaintiff's Exhibit 1296, please?

Q Ms. Kidder, do you recognize this document?

Yes, I do.

Q What do you recognize it to be?

One of the assumption reports llen Weisselberg would request that I prepare periodically.

MR. H REN: I move Plaintiff's Exhibit 1296 native into evidence.

MR. ROBERT: Objection. Statute of limitations.

THE COURT: Granted. It's in.

It's a standing objection, but if you feel the need, you can say it every time.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1296 in evidence.)

Q Ms. Kidder, do you see at the top of the page reads:

"40 Wall Street LLC six-year budget projection?"

Yes, I do.

Q nd you prepared this document?

I did.

Q Did anybody give you instruction as to how to prepare this document?

Yes.

Q Who did?

llen Weisselberg.

Q Did Mr. Weisselberg direct you to prepare this document?

Yes, he did.

Q Does this document contain assumptions?

Yes.

Q Did llen Weisselberg direct you to make the assumptions contained in this document?

Yes, he did.

Q I'd like to look down at Column R.

Do you see the information in Cell R 10 that states "assumed full lease up 1/2013?"

Yes, I do.

Q What does that indicate?

It means that whatever vacant space at the time was to be assumed as fully leased up as of 1/2013.

Q nd is that one of the assumptions Mr. Weisselberg

directed you to make?

Yes.

Q nd the next row down where it states on the left side in Column C and D "pending lease assumption." Do you see that?

Yes.

Q What does that indicate?

That's also another line item llen had me assume that there were at least leases that were currently out and pending signing, so he wanted to break that out on a separate line.

Q nd is the assumption that the pending leases would generate the figures in Cells J through Q an assumption that Mr. Weisselberg directed you to make?

Correct.

MR. H REN: Can we zoom out a little bit?

Q Ms. Kidder, if we could scroll down through general expenses and administrative expenses all the way to the bottom. re there in this six-year budget projection any line items for leasing commissions?

I don't see any.

Q Tenant improvements?

I don't see any on the spreadsheet.

Q How about capital expenditures?

There aren't any on this report.

Q Did Mr. Weisselberg ever convey anything to you about what this document would be used for?

No, he did not.
MR. H REN: Let's move to Plaintiff's Exhibit 1032.
Q Ms. Kidder, this document is very large. I'm not going to show you a ton of it, but I will just state it was produced in this form and I'd like to direct you to page three.
Does this page of the document appear to be a scan of the six-year budget projection that you prepared that we just looked at as Exhibit 1296?
I don't know if it's the same one, but it's definitely a six-year budget projection that I prepared.
Q nd you can see on the right side it contains the same language "assumed full lease up 1/2013," do you see that?
Yes, I do.
Q Included in vacancy assumption calculation as pending lease assumption, does it appear to you to be the same or similar to the exhibit that was number 1296?
It is the same or similar.
Q nd did Mr. Weisselberg direct you to prepare this document?
Yes.
Q nd did Mr. Weisselberg direct you to make the assumptions that are contained in this document?
Yes.
Q I'd like to direct your attention lower on the page to where there is some handwriting.

Ms. Kidder, do you see on the right side of the page there is some adding machine math?
I do.
Q nd do you see that one figure is labeled , another is labeled B?
I do.
Q Do you recognize the handwriting here?
It appears to be llen Weisselberg's.
Q nd just to get an understanding of the calculation that's taking place, do you see in the line that says "operating cash flow" the figure on the left, which I think is 9885810 is labeled B?
Yes, I see that.
Q nd the full total of all the figures of 141,057,720 is labeled ?
Yes, I see that.
Q nd in the adding machine calculation can you see that the full total is -- that -- excuse me -- the B, meaning the number 9885810 is subtracted from the full total?
Yes, I see that.
Q nd so is the effective result of this calculation to sum the budgeted figures for 2013 to 2017 with the assumptions contained in this document?
Yes.
MR. H REN: The Court can take judicial notice that

the Figure 131,171,910 when divided by five is 26,234,382.
nd I'd like to switch to Plaintiff's Exhibit 788, the 2011 Supporting Data and look at Rows 112 to 119.
Q Ms. Kidder --
THE COURT: Normally you pause when you say you'd like me to take judicial notice so.
MR. H REN: My apologies, Your Honor.
THE COURT: I created my own pause. I will take judicial notice of the math, assuming it's correct.
MR. H REN: Thank you.
THE COURT: I'm sure you checked it five times.
MR. H REN: I probably had done the adding and subtracting many times at this point. I appreciate that.
Q Ms. Kidder, in Cell G 119, do you see a net operating income of 26,234,400?
I see that, yes.
Q nd do you see that the document states "average income for the five-year period 2013 to 2017" in Cell B 114?
I'm sorry, which cell?
Q It crosses over into B and C, but it's Row 114.
The number that's 47819?
Q Yes.
I see that, yes.
Q nd do you see that in Row 116 it states "average expenses for the five-year period 2013 to 2017 in the amount of

21,585,000?"
I see that.
Q Did you ever when preparing the six-year cash flow projection in Exhibit 1296 have an understanding that it would be used to value 40 Wall Street for the purposes of a Statement of Financial Condition for Mr. Trump?
No, I did not.
Q Moving to a new topic of management fees.
Ms. Kidder, I want to just talk about the refinancing of 40 Wall Street in 2015 with Ladder Capital Finance.
Do you generally recall that that occurred?
Yes.
MR. H REN: I'd like to mark Plaintiff's Exhibit 652.
THE COURT: It's marked. re you looking to introduce it into evidence?
Q Ms. Kidder, do you recognize this document?
Yes.
Q What do you recognize it to be?
llen Weisselberg instructed Haroula Zapantis to provide the trailing 12 as of 3/31/15. So she prepared it, sent it to me and I forwarded it on to llen Weisselberg who then forwarded it on apparently to Jack Weisselberg.
Q Just to clarify, when you say "trailing 12," what are you referring to?

The 12 months of income and expense for 40 Wall Street.
Q And looking at the document there is an e-mail at the bottom from Ms. Zapantis to you and then an e-mail from you to Jack Weisselberg copying Allen Weisselberg. Do you see that?
Yes.
Q So is it -- just so I understand, Allen Weisselberg directed Ms. Zapantis to prepare this document, Ms. Zapantis sent it to you and you sent it along to Jack Weisselberg?
In this e-mail trail, but prior to that it would have gone to Allen Weisselberg for his review before being sent to Jack Weisselberg.
Q And what's your basis for that understanding?
I'm sorry. I don't understand the question.
Q What's your basis for an understanding that the trailing 12 cash flow document would have had to have been reviewed by Allen Weisselberg before it went to an outside party?
Everything would have had to have been reviewed by Allen Weisselberg.
Q And when you say "everything?"
Any document such as this, trailing 12, a financial statement.
Q So any -- fair to say any financial document before it went to an outside party had to be approved by Allen Weisselberg?

Yes.
Transcript continues on the following page.....

Q Who is Haroula Zapantis?
She is a senior accountant at the Trump Organization.
Q Did Jeff McConney and Allen Weisselberg generally supervise her work?
Yes.
Q And I would like to take a look at the attachment beginning on page two. I think you actually answered my question about this document, so I'll just move to admit it.
MR. ROBERT: Objection; statute of limitations.
And is it with the attachment, too, so we make sure it is one document?
MR. HERREN: Yes, it is one document. The attachment is not needed.
MR. ROBERT: Same objection.
THE COURT: Same ruling. Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 652.)
Q Let's move to Plaintiff's Exhibit 636. Ms. Kidder, do you recognize this e-mail and its attachment?
Yes, I do.
Q What do you recognize them to be?
The year-end cash flows for the periods requested for 40 Wall Street year ending December 31, 2012, 2013 and 2014.
MR. HERREN: I move to admit this document into

evidence.
MR. ROBERT: Same objection.
THE COURT: Same ruling. Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 636.)
Q Ms. Kidder, focusing on the e-mail on the first page, do you see a request from Jack Weisselberg?
I do.
Q And what is Mr. Weisselberg, being in this case Jack Weisselberg, asking for?
The attached information.
Q And when you say "attached information" -- well, he states in his e-mail, "Please send me the 2012-2014 year-end cash flow statements for 40 Wall." Do you see that?
Yes, I do.
Q You understood him to mean -- what did you understand that to mean at the time?
The year ending December 31st and corresponding year cash flow statements. That's what is attached.
Q And before you sent him the attachment, did you obtain approval to do so?
Yes, I did.
Q From whom?
Allen Weisselberg.
Q I'd like to direct your attention to page three of the

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document. nd speaking generally, what is the information contained on this page?
Cash basis income, cash basis expenses.
Q nd is that for a particular year?
I'm sorry?
Q Is that for a particular year?
December 31, 2014 -- year ending December 31, 2014.
Q nd the subsequent page, page four, same question?
Same information, year ending December 31, 2013.
Q nd same question for page five?
Same information for year ending December 31, 2012.
Q Okay. Focusing your attention on page five under "administrative expenses "about ten lines down, there's an item entitled, "management fees and expenses".
Yes.
Q nd the amount identified is $99,999. Do you see that?
I do.
Q nd do you see a similar entry on page four for 2013?
I do.
Q nd do you see a similar entry on page three for 2014 in the amount of 100,000 exactly?
Yes.
Q Let's move to Plaintiff's Exhibit 1024. Ms. Kidder, do you recognize this document?
It's a detailed general ledger for 40 Wall Street

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L.L.C.
Q Is it for a particular year?
2012.
MR. H REN: Could we scroll down to account number 51511 in row 19739.
Q Ms. Kidder, do you see in this detailed general ledger an account 51511 for management fees and expenses?
I do.
Q Do you see that in each month in 2012, there's a fee of $8,333.33?
I do.
Q Do you see in row 19761 -- excuse me. 19,757 and 19,759, there are --
Yes.
Q There are -- there's one fee amount specified of $788,218.76?
I do.
Q nd another in two rows down from that of $620,685.77?
Yes, I see that.
Q In the entries, there is a notation of "DM." Do you have an understanding of what "DM" means?
It is a debit memo.
Q Does the phrase "manual transaction" relate to the abbreviation DM?
Correct.

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Q What is manual transaction mean?
This would have been an internal transfer from 40 Wall Street, L.L.C. to the entity, the Trump Corporation for payment of the 2010 management fee and below it the 2011 management fee.
MR. H REN: Could we scroll down to cell C19779. ctually, S. Excuse me.
Q Is the figure in S19779 a running total of management fees for 2012?
I don't see 19,000. I'm --
Q Oh. There's a figure in -- it says on the far right column 1,508,904. You see that?
Yes.
Q Is that in your understanding a running total of management fees in 2012?
That's the running total of management fees paid in 2012 cash basis.
Q Understand. Do you have an understanding as to why the 1.5 million in management fees paid in calendar year 2012 was not included in the year end cash flow report for 2012 that was provided to Ladder Capital?
llen Weisselberg said that since they were affiliated entities, management fees such as those could be omitted from the statement for this purpose.
Q Let's look at plaintiff's exhibit --
MR. H REN: ctually, could I move this exhibit

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first into evidence to the extent I have not already done so?
MR. ROBERT: Same objection.
THE COURT: Same ruling. Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1024.)
MR. H REN: Let's go to Plaintiff's Exhibit 1025.
Q Ms. Kidder, do you recognize this document?
It is a general ledger, detailed general ledger.
Q For which property?
40 Wall Street, L.L.C. for calendar year 2013.
MR. H REN: Could we scroll down to row 19130.
Q Ms. Kidder, beginning in row 19129, do you see an account 51511 for management fees and expenses?
Yes, I do.
Q nd do you see a similar pattern of $8,333.33 per month?
Yes, I do.
Q nd do you have an understanding of the information in row 19144 and just 19144? Do you see that information?
It's the Mazars calculated management fee for calendar year ending 2012.
Q nd that amount is paid in 2013 according to this general ledger, right?

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Correct.
Q nd it is identified by "DM." Does that again refer to manual transaction?
That does.
Q nd do you have an understanding as to why only -- why this figure was omitted from the cash flow report provided to Ladder Capital?
gain, llen Weisselberg said it was a payment to an affiliated company and didn't need to be included for that purpose.
Q When he said "a payment to an affiliated company," did he have a phrase that he used?
That's the best of my recollection.
Q Understood.
THE COURT: That wasn't the phrase, though, right? That wasn't the phrase he used. He's looking for certain words.
Q Would it refresh your recollection if I told you that in your testimony, you said one pocket to another?
Okay. One pocket to another.
MR. H REN: Okay. Let's move to Plaintiff's Exhibit 1026.
Q Ms. Kidder, do you recognize this document?
Detailed general ledger 40 Wall Street, L.L.P. calendar year 2014.

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MR. H REN: I move this document into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1026.)
MR. H REN: I would like to scroll down to the rows beginning 17,629.
Q Ms. Kidder, do you see again an account 51511 for management fees and expenses?
I do.
Q nd do you see a similar pattern of $8,333.33 per month?
I do.
Q nd do you see an entry for a management fee paid on June 12, 2014 in the amount of $907,988?
I do.
Q nd do you have an understanding as to why that figure is not reflected on the cash flow report provided to Ladder Capital?
The same explanation as the last questions. One pocket to another.
Q Thank you.
MR. H REN: I move this document into evidence.
MR. ROBERT: Same objection.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as

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Plaintiff's Exhibit 1026.)
MR. H REN: Let's move to Plaintiff's Exhibit 1063.
Q Ms. Kidder, do you recognize this document?
Yes.
Q What do you recognize it to be?
It appears to be another trailing cash flow that was prepared for Jack Weisselberg.
Q On page two of the document, I want to direct you to the far right-hand column. nd the print on this document is very small, so we're going to have to zoom in.
Under administrative expenses, do you see that there's a row for management fees and expenses in the amount of $100,000?
Yes, I do.
MR. H REN: Could we put on the screen with this image the same image from the version sent in Exhibit 652.
Q So, Ms. Kidder, on the right, you'll see that there's a list of administrative expenses. Next to management fees and expenses, it states $1,007,988 and that was in the version you sent on pril 10, 2015 in Exhibit 652. nd then here in Exhibit 1063, the figure has been reduced to 100,000 in the version sent on pril 21st of 2015.
Do you have an understanding as to how the management fee number came to be reduced to 100,000?
llen Weisselberg instructed me to make the change.

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MR. H REN: I move Exhibit 1063 into evidence.
MR. ROBERT: Same objection.
THE COURT: Same ruling and granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1063.)
MR. H REN: Let's move to Exhibit 1061. This is related to the transactions that we've been looking at.
Q Ms. Kidder, do you recognize this document?
Yes.
Q What do you recognize it to be?
It seems to be a chain of questions relating to the finance.
MR. H REN: I move this document into evidence.
MR. ROBERT: Same objection.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1061.)
Q In the e-mail on page one is a question from Jack Weisselberg to you and it reads, "I have some questions on the historicals (some of which related to potential one-time costs)."
Do you have an understanding as to what Jack Weisselberg was referring to there?
He's asking questions about what we tagged as one-time costs on the information that was sent to him previously.

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Q nd looking further into the items in the e-mail that he sent to you, there is a question there about real estate taxes. Do you see that?
I do.
Q nd in number two, "There's a question about one-time items that need to be removed, but the G& operating expenses drop significantly from 2012 and 2013 to 2014 and the T-12."
Do you have an understanding as to what that refers to?
The T-12 means trailing 12.
Q nd do you have an understanding of what Mr. Weisselberg meant by "G& operating expenses drop significantly from 2012 and 2013 to 2014 and the T-12"?
He's asking why the expenses in those categories dropped in those years significantly.
Q nd he concludes by asking, " m I missing any other non-recurring costs." Do you see that?
Yes, I do.
Q Do you have an understanding as to why Jack Weisselberg was asking about non-recurring costs?
Because if it is an extraordinary expense, it wouldn't be factored into financing. For example, if you have a legal invoice for a tenant that you're evicting that's $750,000 in one year, you wouldn't expect to see the same number the next.
Q In looking at page one at the top, there is an e-mail from you to llen Weisselberg.

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Why did you forward Jack Weisselberg's e-mail to llen Weisselberg?
That was standard practice and item number one, I wouldn't know how to answer. That's why there's a question mark. I wasn't involved in any tertiary filings with Marcus & Pollack. Number two I did answer because I knew that the operational team and llen Weisselberg were cutting the expenses as much as they could.
Q nd there's a reasons in item two to the test required at one point by the bank. Does that refer to a debt service cover ratio?
That is correct.
Q What's your understanding of what debt service ratio means?
Minimal. I just -- Jeffrey McConney prepared that calculation.
Q Moving to a new topic, Plaintiff's Exhibit 1282. Ms. Kidder, we're going to spend a little bit of time talking about some penthouses at Trump Park venue.
Okay.
Q Ms. Kidder, do you recognize this document?
Yes, I do.
Q What do you recognize it to be?
I used to track all of the deals and agreements for Ivanka Trump, so I prepared a spreadsheet.

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Q So this spreadsheet that's attached to the e-mail is something you prepared?
Yes.
Q nd it was part of your practice to prepare spreadsheets of that type?
For Ivanka, yes.
Q Can you give us a time period as to when that was part of your responsibilities?
I believe it was in 2010 it started up until June of a couple of years ago.
Q Okay. Does 2017 sound about right?
Yes.
Q Who is Lizabeth Kyprislidis?
She works for the Trump Organization, trademarks, licensing.
MR. H REN: ctually, can I move the e-mail into evidence?
THE COURT: Granted. It is in.
MR. ROBERT: Statute of limitations.
THE COURT: Understood.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1282.)
MR. H REN: Let's pull up 1282 native.
Q Ms. Kidder, the spreadsheet on the screen reflects the document you prepared?

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Yes, it does.
MR. H REN: Could we go to the PH28 tab, please. I move the native file into evidence.
THE COURT: It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit.)
Q Do you see at the top of the page it reads, "502 Park venue Penthouse 28"?
Yes, I do.
Q What's your understanding of that phrase?
It was an agreement between Ivanka Trump and Jared Kushner and Trump Park venue, L.L.C. to rent Penthouse 28 at 502 Park venue.
Q nd do you see next to agreement date it reads, "January 6, 2011"?
Yes.
Q Next to the word "terms," it indicates a start date of January 1, 2011?
Yes.
Q nd next to the word "conditions," it reads "Tenant shall have exclusive right during the term of this lease to purchase the unit at the price of $8,500,000"?
Yes, I see that.
Q Did you obtain the information in this tab concerning a lease of Penthouse 28 from somewhere?

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From whichever attorney worked on the lease. I don't recall the name.
Q But did you obtain the information from the lease?
Yes, I did.
MR. H REN: Let's move to Exhibit 1278.
Q Ms. Kidder, do you recognize this e-mail?
I recognize the e-mail.
Q nd what do you recognize it to be?
That I sent Jeff McConney an attachment of the agreements for 2012 for Ivanka deals.
Q Just so I understand, you understand the attachment to be a similar spreadsheet to the one we looked at a minute ago?
Yes.
Q nd you were sending Mr. McConney a copy of it on November 28, 2012?
pparently so, yes.
MR. H REN: I move the e-mail into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1278.)
MR. H REN: Can we move to 1278 native, please.
Q Ms. Kidder, this is the attachment to the e-mail?
MR. H REN: nd if we could again click on the tab PH28.

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THE COURT: Granted.
Q Ms. Kidder, does the information on this tab reflect the lease between Trump Park venue, L.L.C. and Ivanka Trump and Jared Kushner for a lease Penthouse 28 at 502 Park venue with an option to purchase of $8.5 million?
Yes.
Q So you provided that information to Jeffrey McConney in the spreadsheet on November 28th of 2012?
Yes.
MR. H REN: I move the native file into evidence.
THE COURT: Granted.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit.)
MR. ROBERT: Same objection.
MR. H REN: Could we move to Plaintiff's 618, please. For the record, this is a 14-page document produced in this action by Ivanka Trump.
Q Ms. Kidder, I would like to direct your attention to page 14. Do you recognize this e-mail?
Yes.
Q What do you recognize it to be?
It is an e-mail from Sonja Talesnik regarding the modification of Penthouse 20 and 28.
Q nd who is Sonja Talesnik?
She is an attorney at the Trump Organization.

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Q nd can you speak just in general terms to her areas of work at the Trump Organization?
Well, usually, she just deals with the management of the condominiums, but apparently in this instance, she assisted in the preparation of these two documents.
Q When you say she works on matters relating to condominiums, what do you mean?
She works with the management team for the homeowners associations that we manage.
Q In looking at the e-mail on the page, do you see that there is a line at the top that reads, "Please see amendment to the lease that provides that the right to purchase the PH28 has been surrendered"?
I do.
Q nd do you have an understanding as to what that means?
That means that Ivanka Trump and Jared Kushner no longer would be exercising the right in the lease to purchase Penthouse 28.
Q nd then it follows with "re-PH20 "and it states, " ttached to the lease for PH20, which will commence November 1, 2015 "and it continues, and then item D states to the far right, "Tenant shall have the exclusive right which is not assignable during the term of this lease "-- let me read that again because I missed the parenthesis.
"Tenant shall have the exclusive right (which right is

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not assignable) during the term of this lease to purchase the unit at the price of $14,264,000, notwithstanding the filing of any amendment to the offering plan that may increase the price of the unit."
Do you see that?
I do.
Q Did you have an understanding on or about the date of this e-mail that Ms. Trump had an option to purchase this penthouse unit for $14,264,000?
Yes.
Q Where did you gain that understanding?
From this e-mail and the attachments.
MR. H REN: Okay. Let's move to Plaintiff's Exhibit 1157, which is already in evidence.
Q Ms. Kidder, do you see in Exhibit 1157 an e-mail from Patrick Birney to you copying llen Weisselberg and Jeffrey McConney?
Yes, I do.
Q nd the subject is 2015 Trump Organization corporate cash flow.
Yes.
Q nd in the e-mail, Patrick writes, "Donna, see attached 2015 Trump Organization corporate cash flow shell."
Yes.
Q Do you have an understanding of the word "shell" in

this e-mail?
n un-filled out Excel spreadsheet.
Q Pulling up the native document that's also already in evidence, do you have an understanding as to who created this Trump Organization corporate cash flow shell?
Patrick Birney at the direction of llen Weisselberg.
Q Mr. Weisselberg and Mr. McConney are copied on Mr. Birney's e-mail that's Exhibit 1157. Do you have an understanding as to their involvement in the generation of the Trump Organization corporate cash flow spreadsheet?
They would have created the parameters and instructed Patrick and myself from the parts that I was responsible for what to include.
Q Thank you.
MR. H REN: I'm going to move to a different topic, licensing and incentive fees, and I'll turn to Plaintiff's Exhibit 3169.
Q Ms. Kidder, do you recognize this document?
Yes.
Q What do you recognize that to be?
It is a report that I was instructed by Jeffrey McConney to prepare every year at this time; at this time being usually for that range, July to June.
Q nd speaking generally about this report that you prepared every year, what does it contain?

It contains the projected amount of license fees and/or incentive fees that would be received through the license deals from that date through the ending date.
MR. H REN: I move this e-mail into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3169.)
MR. H REN: Could we, please, pull up Exhibit 3169 in native form.
Q Ms. Kidder, do you recognize the spreadsheet on the screen?
Yes.
Q nd what do you recognize it to be?
The projection. Some of the numbers are actual if it was prepared in September and then started in July and the rest would be a projection.
Q The information that is in column B, how did you obtain that information?
So per the instructions given to me by Jeffrey McConney, I was to take the -- and you could see the explanation based on projected sell-out of remaining units to -- as if they would all sell out in that timeframe.
Q nd how did you go about obtaining the information to do the analysis?
From the licensees. They would have a projected

sell-out or the selling price for all of the remaining units.
Q nd can you walk us through what -- just how far the numbers are calculated from column B over to column G, not about the numbers themselves, but generally what the columns reflect?
We will start with 27. That seems to be easiest because that's actually the entire amount is based on a project asked sell-out. That's a report provided by the licensee of all the units that they have for sale, Trump-branded units. That is the fee based on whatever the percentage is of royalty in the agreement. That's the total fee.
Then the next column is zero. nd the column E is TTT. That was the entity that received I want to say 21 percent or a piece depending on what the agreement said of the license fees. The net is to DJT, that's to Donald Trump, which is the license fees less the fees payable to TTT.
Q nd just so I understand, column B is the total fee. Then there is some amount taken out for less TTT which might be zero. nd then there's some amount taken out for TTT. nd then what remains in column G is the net?
Correct.
Q nd what does TTT refer to?
TTT Consulting, L.L.C.
Q nd what is TTT Consulting, L.L.C.?
It was an agreement with Eric Trump, Donald Trump, Jr. and Ivanka Trump to receive a percentage of fees generated by

certain license deals.
Q re there any assumptions built into the information contained in column B regarding sell-out timing?
Well, the calculation in and of itself is an assumption if column B was an assumption because they would only get fees if we received column B.
(Continued on the next page.)

Q So what I'm trying to understand is that -- let's take as an example, the line for Dubai.

MR. H REN: Could you expand Row 25 so we can see the text?

Q Let's look at, I guess, Row 27, the same row you were looking at. It states: "DT marks WORI (and then it ends with on balance of projected sellout.)" nd the number is 6,167,301.

Is this figure -- is that figure based on any assumption as to how quickly the sellout would occur?

s if it all happened in that time frame on the top of the page.

Q nd the time frame on the top of the page is --

MR. H REN: Can we scroll up by June 2018?

Q So the assumption is that the whole sellout would occur between July 1, 2017 and June 2018?

Yes.

Q nd to the extent there are --

MR. KISE: Your Honor, maybe it's me. This has been very granular this morning, but I'm trying to find out what relevance TTT Consulting has. I'm not sure how any of this has to do with why we're here.

MR. H REN: I'll just say to Mr. Kise these figures play a role in the statements that are in question and some of the valuations, so I'm getting an understanding of the assumptions from the witness who prepared the spreadsheet.

MR. KISE: I don't know that the TTT numbers have anything to do with the Statements of Financial Conditions, but if he can tie it up at some point, but it's very granular.

THE COURT: I'll give him some further leeway subject to connection.

Q So Ms. Kidder, to the extent that there are sellouts reflected in the annual spreadsheet that you prepared and is the assumption about the space of the sellout the same as what you just described?

Yes.

MR. H REN: Let's mark as plaintiff -- excuse me -- not mark. Let's pull up Plaintiff's Exhibit 3168, which is already marked.

Q Ms. Kidder, putting aside the handwriting on the top of the page and on the right side of the page, do you recognize this spreadsheet as one of the annual spreadsheets you prepared?

Yes.

Q nd do you see that there is handwriting at the top of the page and in parens it says "Donna?"

Yes.

Q Do you recognize that handwriting?

I believe it's Jeffrey McConney's.

MR. H REN: I move to admit this document into evidence.

THE COURT: Granted. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3168 in evidence.)

Q Line that says "net to DJT" at the bottom, under "total fees," do you see where it says 25,785,639?

I do.

Q Does that figure match the information contained on Plaintiff's Exhibit 3169 native one?

25,785,639 those are the numbers on the worksheets.

Q So from Plaintiff's Exhibit 3168, which was produced by Mazars, I think you would agree that the total licensing fee amount reflected on Plaintiff's Exhibit 3168 came from a spreadsheet that you prepared?

Yes.

Q Thank you.

MR. H REN: Your Honor, I have no further questions for this witness at this time.

THE COURT: Okay. Will there be any cross examination of the witness at this time?

MR. KISE: No.

THE COURT: The witness is excused.

Plaintiff call your next witness. We have another seven minutes or so before we break.

(Whereupon, the witness is excused from the witness

stand.)

MR. L DOV: Your Honor, I'm Mark Ladov here on behalf of the People of the State of New York and we call Doug Larson as our next witness.

THE COURT: Okay. Mr. Larson?

We're looking for Mr. Larson, Lieutenant.

THE COURT OFFICER: We're on it.

THE COURT: We'll take a break at 11:30 and I'll give a five-minute warning before that.

Mr. Haren, you ended so abruptly here.

MR. H REN: Your Honor, I neglected to say the magic words about Plaintiff's Exhibit 1032.

MR. ROBERT: Which one is that?

THE COURT: 1032.

MR. ROBERT: I already handed it back. I'm sure I will have another objection.

Just a statute of limitations objection, Your Honor, is fine.

THE COURT: Granted. It's in evidence and we're ready for the -- for Mr. Larson.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1032 in evidence.)

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and

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approaches the witness stand.)
THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?
THE WITNESS: I do.
THE COURT OFFICER: Please have a seat. Please state your full name and either home or business address on the record.
THE WITNESS: Douglas Larson. 125 Park venue, New York, New York.
THE COURT: Okay. Counsel, please proceed. Mr. Larson, sounds like you have a nice loud voice. Just remember to speak right into the microphone.
THE WITNESS: Sure.
DIRECT EX MIN TION
BY L DOV:
Q Good morning, Mr. Larson. Where do you currently work?
I work at Newmark.
Q nd what is Newmark?
Newmark is a full-service real estate company.
Q nd what is your title there?
Executive vice president.
Q What is the scope of your work at Newmark?
Valuation advisor, appraiser.

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Q So are you a professional appraiser?
Yes.
Q Do you hold any professional licenses related to your work?
Yes. I'm a certified New York real estate appraiser.
Q nd within that New York real estate appraisal work do you have any specializations?
Yes, office and retail.
THE COURT: Witness please be a little closer to the microphone like this.
THE WITNESS: Okay.
Q nd maybe you can just explain for us briefly what's the difference between office and retail property?
Retail properties are, you know, occupied or leased to merchandisers to sell goods and office space is occupied by office users.
Q How long have you been with Newmark?
Six years.
Q nd where did you work prior to Newmark?
Cushman & Wakefield.
Q nd what is Cushman & Wakefield?
It's also a full-service real estate company.
Q How long were you at Cushman?
lmost 25 years.
Q What title did you hold when you left Cushman?

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I'm trying to remember. Senior director. I can't recall exactly.
Q nd so was the work you did at Cushman the same as the work you're doing now at Newmark?
Yes.
Q nd have you spent your entire career as a professional appraiser?
Yes.
Q So Mr. Larson, I'd like to show you a copy of an appraisal that has already been entered into evidence as Plaintiff's Exhibit 118, and I'm going to walk through this document with you for a couple of minutes just to understand a little bit about what your appraisal practice entails. So if you can turn to page eight of this document.
re you familiar with this document, Mr. Larson?
Yes. This is an appraisal prepared by Cushman & Wakefield for Ladder Capital.
Q nd what's the property being appraised here?
It's 40 Wall Street.
Q nd you can see it says an " ppraisal report as of June 1, 2015." So what does that signify?
That is the effective date of value.
Q nd if you turn, I guess, like, three more pages to page 11 of this document, is that your signature, Mr. Larson?
Yes, it is.

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Q nd does your signature signify that this is the final version of this appraisal report?
Yes.
Q nd there is two other names listed here. Can you just tell me who those people are?
Naoum, Mike Papagianopoulos and Robert Nardella.
Q nd what was Mr. Papagianopoulos's role in working on this appraisal with you?
He worked on our team appraising office properties.
Q nd what was Mr. Nardella's role?
Easy area leader.
Q nd Mr. Larson, does this report accurately describe the information that you received along with your colleagues to perform this appraisal?
Yes, it does.
Q nd this appraisal report, does it accurately describe your analysis of that information?
Yes, it does.
Q So does this appraisal report accurately state your opinion of the value of 40 Wall Street as of June 1, 2015?
Yes.
Q I'd like to turn to page 118 of the document and you'll see here there is an addendum that reads "Engagement Letter." Can you just tell me generally speaking what is the importance of an engagement letter to an appraisal engagement?

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Every appraisal requires an engagement and it states the terms of the agreement between client and appraiser.
Q So let's look at the letter here just to understand what some of those terms are.
MR. L DOV: Can we scroll down to page 188?
Q nd we can see that this letter describes the anticipated scope of work.
MR. L DOV: Can you scroll down a little bit more? So the first header there is "USP P Compliance."
Q Do you understand what USP P refers to?
Yes, it's the Uniformed Standards of Professional ppraisal Practice.
Q nd, again, at a high level what does USP P compliance mean?
Every appraisal needs to be USP P compliant and it states the scope of work, the process of preparing an appraisal.
Q nd does USP P apply to any opinion of value that you may work on as an appraiser?
Can you restate that?
Q I guess what I'm asking is if you were doing -- so we know that this full 2,300-page appraisal report, you need to comply with USP P to perform this work, but if somebody came to you and said "I don't need a full appraisal report, I just need you to help me value my property over here for a specific asset, I want to figure out what it's worth," do you need to comply

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with USP P there as well?
Yes, every appraisal needs to be USP P compliant.
Q So from your answer I understand that there is no difference to you as an appraiser between an appraisal, meaning this formal report and any opinion of value that you might offer for a specific real estate property?
It would need to be USP P compliant, correct.
Q So looking down here where it says "general scope of work," the first item listed is "inspect the property to the extent necessary to adequately identify the real estate."
Did you inspect this property as part of your appraisal?
Yes.
Q nd why do you do that?
Well, we look at the condition of the property, we look at the condition of the space, the tenancy fit outs, mechanical system. So it's a complete inspection.
THE COURT: Five-minute warning.
Q You just got here.
So the second item here says "research relevant market data in terms of quantity, quality and geographic comparability to the extent necessary to produce credible appraisal results."
gain, can you just tell us generally what you did to comply with that requirement?
Well, we look at, you know, market trends, market

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statistics, surveys, data collected from public resources in discussion with other real estate professionals in prior appraisals.
Q nd this is all your standard practice in the regular course of business; is that correct?
Yes, absolutely.
Q nd then below that it reads, quote, "Consider and develop those approaches relevant and applicable to the appraisal problem. We anticipate developing the following valuation of approaches."
nd there is two approaches listed, the income capitalization approach and the sales comparison approach.
So just taking those one by one, can you explain to us what the income capitalization approach means?
Yes. It's -- there are two components of it; the direct capitalization and a discount cash flow analysis. The requirement in New York City and complicated assets, the primary method of value is discount cash flow. nd it looks and reviews of income less expenses and operations and occupancy and rents of the property.
Q nd then once you've determined that income when you're using that method what do you do next to try to determine the value of the property?
You apply investment rates.
Q nd are investment rates similar to cap rates?

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Yes, it's one of the investment rates that's used.
Q Sir, what exactly is a cap rate?
cap rate is -- it's net operating income divided by a purchase price and it's a return on and of an investment.
Q nd does the cap rate come into play with the direct capitalization method as well?
Yes.
Q Okay. nd can you just explain for us how that works?
So a net operating income needs to be calculated and the capitalization rate, that overall capitalization rate is applied and produces a value by direct capitalization.
Q nd what factors go into determining a cap rate when you're doing that kind of an analysis?
You typically look at sales and extract those capitalization rates, you discuss with investment sale brokers and professionals, look at investor surveys and extract it from the market.
Q nd sorry, you said singles in your answer. What do you mean by singles there?
I couldn't hear you.
Q I think one of the first things that you said was you look at singles. Maybe I misunderstood you?
No. I don't think I said singles.
Q Okay. Sorry. So you also -- sorry. Why don't you explain?

No, there are several sources for looking at cap rates and -- which I just stated. So the capitalization rate doesn't apply to the year one net operating income and a value is produced.

Q nd so when you're taking capitalization rates derived from property sales and using them to think about how to value a different property, do you have to adjust the cap rate to make it apply to the property you're looking at?

Yes.

Q nd what factors would you look at in terms of making those kinds of adjustments?

Well, you have to analyze where you got the cap rate from, what sale and know the occupancy or above or below market rents or contract rents to determine if the cap rate is market.

THE COURT: One-minute warning.

MR. L DOV: Okay.

Q nd generally speaking, if I understood your testimony correctly, the direct capitalization approach is sort of a simpler version of this analysis than the discounted cash flow approach. Is that fair to say?

Direct capitalization is used as support for the discounted cash flow analysis. In my practice almost every appraisal applies a discounted cash flow and it's much more complicated.

THE COURT: Okay. s usual, we are going to take a

ten-minute break that will take 15 minutes. See you back here at 11:45. nd I'm starting at 11:45 whether or not you're here.

(Whereupon, there is a recess in the proceedings. The transcript continues on the following page....

THE OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.

THE COURT: Witness.

MR. L DOV: One housekeeping issue. We are looking at Plaintiff's 118, the appraisal of 40 Wall Street. This was previously moved into evidence for purposes of notice. Based on Mr. Larson's testimony, we would seek to move it into evidence for all purposes at this time.

THE COURT: Hearing no objection, which I will probably overrule anyway, granted. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 118.)

THE COURT OFFICER: Ready, Judge?

THE COURT: Yes.

Please continue the examination.

Q So Mr. Larson, before the break, you were explaining the income capitalization approach. Can you just give us a similar high level explanation of what the sales comparison approach involves?

Yes. The sales comparison approach is another technique or one of the approaches to value a property. It applies prices per foot extracted from sales and makes adjustments to them and then applies them to the subject property.

Q nd when you say "adjustments," what kind of

adjustments are you talking about?

This would be adjustments for condition of sale, for occupancy, for physical characteristics, location.

MR. L DOV: nd so let's scroll back down do page 189 of the exhibit. nd I just want to look at a section in the engagement letter entitled, "Fee expenses and other terms of engagement."

Q So you'll see, Mr. Larson, it says, "start date." "The appraisal process will initiate upon receipt of signed agreement and the receipt of the property specific data."

re you able to start your appraisal process before getting a signed letter of agreement like this one?

No.

Q nd two lines down, it says, "Delivery three weeks from receipt of signed engagement letter."

Is that sort of a typical amount of time that you would take to prepare a full appraisal of a commercial property like this one?

That's a typical timeframe, yes.

Q nd finally at the very top, it says, "Fee $25,000." gain, you cannot provide an opinion of value without some sort of engagement like this probably including a fee; is that right?

That is correct.

Q So stepping away from this document for a moment, Mr. Larson, have you ever entered into an engagement like the one

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that we were just looking at with the Trump Organization or any of its affiliated entities as a client?
I have not.
Q Has the Trump Organization ever paid you for appraisal services?
They have not.
Q I know this question is going to be redundant, but has the Trump Organization ever paid you for any other kind of valuation services?
No, they have not.
Q s we saw from that last report, you have appraised properties owned by the Trump Organization, correct?
Yes.
Q But all of those appraisal were done for other clients and not the Trump Organization; is that right?
Yes, they were done for lenders.
Q So now I would like to show you a document that was previously entered as Plaintiff's Exhibit 1100. So let's actually start by scrolling down to the middle of the screen there. So you can -- actually, do you recognize this document, Mr. Larson?
Yes. This is an e-mail blast that I send out regarding market information and also there is an -- looks like there is a second e-mail from Jeff McConney.
Q Right. We are just going to focus on the e-mail that

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you sent out for now.
Okay.
Q You said "e-mail blast." What does that mean to you?
They send out marketing information to a wide variety of real estate professionals for marketing purposes.
Q nd when you say "marketing purposes," what do you mean by that?
It's -- it's a way to get a company's information out so -- and a way to get your name out to clients for potential work.
Q nd do you have an understanding of how large your mailing list was for these e-mail blasts?
It's very large.
Q nd this e-mail was coming from your Newmark account, but did you do similar e-mail blasts when you were at Cushman & Wakefield?
Yes.
Q I would like to scroll up now and in the forward of this e-mail, you can see some of the different attachments. Can you just describe generally what those documents are?
Yes. The attachments read, New York City office market overview, office building sales, office market overview, another office market overview, trends in the market, some leasing information, so --
Q So these are market reports that you're sending out to

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your clients based on recent sales data; is that right?
Yeah. This is -- this is recent information that, you know, we would have put together to send out, yes.
Q So I would like to take a couple of moments to look at the second document on this list labeled "officebuildingsales.dot.pdf and it begins on page 39 of the document. So again, when you were talking earlier about deriving cap rates from properties or dollars per square-foot from properties, is this the kind of information that you used in your practice?
Yes.
Q nd then in addition, this document -- you can scroll down. You'll see it.
It includes about 20 different sales comps. You would share this with your client, so they could get an understanding of market conditions; is that correct?
That is correct.
Q Just turning back to the e-mail looking back at page one of the document, I think you started to say this before, but at the top, you can see that this is a forward from Jeff McConney to somebody else at the Trump Organization dated September 6, 2018. Do you know Jeff McConney?
Yes.
Q How do you know him?
Through appraisal appraisals that we did.

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Q So he was your contact at the Trump Organization for some of those appraisals; is that correct?
Yes. His name would have been provided by the lender as the property contact.
Q So I would like to turn now to look at one of the properties that you did not appraise for the Trump Organization, a property called Niketown.
MR. L DOV: Can we turn to Plaintiff's Exhibit 707 and turn to page 8 of 25.
Q If you are okay with the screen, I could kind of keep going.
Yeah, I can see the screen.
Q ll right. So I just want to read the first couple of sentences under Niketown. It says, "Mr. Trump is currently the owner of 100 percent of the equity interests in the entities that are the lessees with respect to two long-term ground leasehold estates relating to the land and buildings located between Fifth and Madison venues and principally on 57th Street in New York City. On December 8, 1994, the premises were leased to Nike Retail Services, Inc."
So based on that description, how would you characterize the Niketown property?
This is a retail property.
Q s compared to an office property?
Correct.

Q I would next like to turn to Plaintiff's Exhibit 708. So Mr. Larson, this is a supporting data spreadsheet that Jeff McConney of the Trump Organization provided to an outside accounting firm named Mazars. This spreadsheet along with other documents was used to support Mr. McConney's evaluations of Trump Organization assets and then those values were included in the annual Statements of Financial Condition that we just looked at and the reason I'm showing you this is because this document shows certain conversations involving you that I would like to ask you about.

MR. L DOV: So if we could scroll down to line 62.

Q gain, you'll -- you can see that this is the information used to value Niketown, the property we were just talking about. nd I think you can also see that this is an analysis that valued Niketown at $287,600,000.

If I direct you to lines 80 and 81, do you see that the support shows that the value of the Niketown was derived by taking an NOI, a net operating income, of $8,456,103 and applying a cap rate of 2.940 percent. Do you see that?

Yes.

Q Is that calculation what you described earlier as the direct capitalization method?

Yes. pplying a cap rate to net operating income is a direct cap approach.

Q Sir, I would like to scroll down and direct you to the

notes at line -- at lines 92 to 97. It says there under "cap rate," "9/17/13, per telephone conversation with Doug Larson of Cushman & Wakefield, cap rates for retail properties in upscale areas like Times Square and the Fifth venue area are usually almost 60 basis points lower than office space. To be conservative, we reduced the cap rate used on Trump Tower by 50 basis points to arrive at the cap rate used by Niketown."

So Mr. Larson, do you have any specific recollection of a phone call with Jeff McConney on September 17, 2013?

No.

Q Did you know back in 2013 that Mr. McConney was citing you as a source for his property valuations in this document that he was sending outside the Trump Organization?

No, I wasn't aware.

Q Did you advise Mr. McConney to value Niketown by reducing the cap rate used on Trump Tower by 50 basis points and then using that cap rate to reach a value?

Well, you would probably want to apply retail sales cap rates to look at rather than adjusting office cap rates which are a different property type. It doesn't make sense.

Q So if it doesn't make sense to you, is it your opinion that you would not have offered this advice to Mr. McConney back in 2013?

I don't recall doing that.

Q nd you mentioned that you would use retail comps for a

property like Niketown; is that right?

Yes, you would look at retail comps.

Q We looked a moment ago at an e-mail blast that you sent out sales information to clients. Would some of that sales information include retail comps?

I don't know. Could you show me again?

Q Well, I'm not thinking of that specific e-mail, but generally speaking, did you at -- when you were at Cushman & Wakefield have retail comps that you shared with clients who were seeking that kind of information?

Yes, we have retail comps.

Q So does this 2013 valuation of Niketown reflect your opinion of value for this property?

No, it does not.

Q So now I would like to put these notes side by side with PX 707, the Statement of Financial Condition, and page eight. nd you can see at the bottom there, it says, "The current value of $287,600,000 reflects the net proceeds which Mr. Trump in conjunction with his associates and outside professionals expect to be derived from rental activities pursuant to the lease described above as well as the residual value of the property."

So Mr. Larson, you can see that the value in the Statement of Financial Condition ties back to the number reached in the supporting data for Niketown. Do you see that?

You would have to scroll over a little bit. Yes, it does.

Q So to the extent that you are the outside professional listed in the Statement of Financial Condition, do you believe it would be accurate to say that the value of about $287 million was determined by Mr. Trump in conjunction with you?

No, it is incorrect.

Q You are the only outside professional listed here, is that right, in the support notes?

Yes.

Q So since the Niketown valuation support referred back to Trump Tower, I would like to take a look at the supporting notes for Trump Tower in 2013 as well and that can be found on lines 30 through 60.

MR. L DOV: You can take down the statement, too.

Q So if I can direct you to lines 39 and 40, this document shows that Trump Tower is being valued -- this document shows that Trump Tower is being valued by applying a 3.44 percent cap rate to an NOI of a little bit over $18 million. Do you see that?

Yes.

Q nd then if I direct your attention to the bottom of the screen, and we can blow this up, there is a note for June 30th of 2013. nd it states, "Information provided by Doug Larson of Cushman & Wakefield, Inc. which reflects cap rates of

3.22 percent, 3.54 percent and 3.56 percent for office buildings at 450 Park venue, 650 Madison venue and 499 Park venue. We used the average rate for these three properties." Do you see that note as well?

Yes.

Q So actually, now I do want to show you the support document where those numbers come from. I'm going to show you a document that is marked as Plaintiff's Exhibit 3184.

Mr. Larson, do you recognize this document?

Yes, it's an e-mail.

Q nd who is the e-mail from?

From myself.

Q nd you sent it to Jeff McConney at the Trump Organization; is that right?

Yes.

Q It is dated ugust 5, 2013?

Yes.

Q There is some attachments to this e-mail. re these the same kind of market reports that we were looking at earlier?

Yes, very similar.

MR. L DOV: Your Honor, I would move this document into evidence.

MR. ROBERT: Objection. Statute of limitations.

THE COURT: Overruled. Granted. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3184.)

Q I would like to open the first attachment to this e-mail. It is in the record as PX 3184 native 01. I would actually like to put that chart side by side with the notes from the 2013 spreadsheet for the valuation of Trump Tower.

MR. L DOV: Can we put up Trump Tower PX 708, lines 30. ctually, if you can scroll down again, we are going to look at the note on lines 58 through 60.

Q So Mr. Larson, I just want to -- I just want to tie these numbers from the supporting data spreadsheet to this sales summary. gain, there is a note at the bottom of the sales summary. It says, "It is compiled by Cushman & Wakefield valuation and advisory"? This is a market report that you send out in your e-mail blasts to clients?

Yes.

Q In this case, you sent it directly to Jeff McConney in response to his request for information?

Yes.

Q nd so if we look, you can see the 3.22 percent cap rate for 450 Park venue. That's the first number listed in the supporting data spreadsheet, correct?

Yes, I see that.

Q nd then 3.54 percent for 650 Madison venue, that lines up as well?

Yes, correct.

Q Then the last number, 3.56 percent, that also ties to the third cap rate used in the supporting data spreadsheet; is that right?

Yes.

Q nd looking at the table, those are the three lowest cap rates on the table, right?

Yes.

Q So using them would derive the highest value using that direct capitalization method you mentioned earlier, correct?

Yes.

Q nd this chart is called "Comparable Office Building Sales Summary." So these are office comps, right?

Yes.

Q So again, looking at that note, were you aware at that time in 2013 that Mr. McConney was citing you and your information as a valuation source in his work papers?

No, I was not.

Q nd did you ever advise him to choose these three lowest cap rates from a sales comp chart in order to value Trump Tower?

No. I would look at -- you have -- in order to select comps, you would want to look at more than three comps and you'd have to know like the details behind those sales. So you'd really want to analyze and analyze a bigger set. That

would be our practice.

Q nd when you say "analyze," are you referring to the kinds of adjustments that you talked about earlier?

Yes.

Q nd so now I would like to turn back to document Exhibit 707, the Statement of Financial Condition, on page five. Sorry. I believe it is page seven actually, for Trump Tower. nd you can see in the middle of the page, it says, "The estimated current value of $526,800,000 is based on a evaluation by Mr. Trump in conjunction with his associates and outside professionals applying a capitalization rate to the cash flow to be derived from the building operations."

gain, Mr. Larson, to the extent that you are the outside professional mentioned in this statement, do you believe that that representation is accurate?

Just repeat that again. Thank you.

Q So my question is to the extent that you are the outside professional listed here, is it accurate to say that Mr. Trump valued this property, Trump Tower, at $526 million in conjunction with you?

No, that's incorrect.

Q So I would like to turn back to the supporting data spreadsheet and I'd like to go back to Niketown which we were talking about a couple of minutes ago. I am going to walk us through some of the subsequent years. So can we look at 742

native one. Let's go down to line 72.
So again, you can see that this is Niketown which we were talking about a couple of minutes ago. I just want to direct you to lines 103 to 105. gain, you can see there, there is a similar calculation. This time, the NOI is a little bit over $9.6 million. The cap rate is 2.48 percent. Do you see that?
Yes.
Q nd that's used to reach a value of $389,600,000. Is that -- do you see that?
Yes, I do.
MR. L DOV: Let's go look at the cap rate note for 2016 here. nd actually, can we put this note side by side with PX 708 native one, lines 92 to 97. So that would be the 2016 note and the 2013 note. Great.
Q So Mr. Larson, if you can take a moment to look at these two notes. On the left, we have 2013. On the right, we have 2016. But these two notes are describing an identical valuation method. Do you see that?
Yes, I do.
Q nd the only difference is that on the left-hand side, we have in the 2013 notes a reference to a September 17, 2013 phone call with you. nd on the right-hand side, we have a reference to an identical September 17, 2016 phone call with you. Do you see that?

Yes.
Q So, Mr. Larson, do you recall a September 17, 2016 conversation with Jeff McConney about adjusting office comps to find a cap rate to value Niketown?
I don't recall that.
Q Well, you already testified that you would not have given Mr. McConney this advice in 2013; is that correct?
Yes.
Q So did you give him this advice in 2016?
That would have been unlikely because you have retail comps, you know, and it's -- it's not how we would value in our practice.
THE COURT: I'll ask the witness again to speak in the microphone. It's a skill. You have to look to your left, but talk straight.
Q So I would like to now jump ahead to 2017 and this is PX 758. We can put that side by side. If we could leave up PX 742. gain, I just want to focus on the cap rate notes. So it would be line 124 in the 2017 spreadsheet. So on the right-hand side is the document we just looked at. On the left-hand side is the 2017 supporting data spreadsheet.
Do you see that the note in 2017, referring back to the 2016 analysis, has now changed, the date of the phone call with you from September 17, 2016 back to September 17, 2013?
Yes, I see that.

Q nd then the note for 2017 also refers to this 2013 phone call. Do you see that?
Repeat that. Show me.
Q So if you look here at 2017, can you see that both of these notes are referring to a September 17, 2013 phone call with you in order to derive the method used to value Niketown?
Yes, I see that.
(Continued on the next page.)

Q nd, again, were you aware in 2017 that Mr. McConney was reporting in his work papers to outside parties that he was valuing Niketown based on a 2014 conversation with you?
No, I was not.
Q s an appraiser, would you use a --
lso, I was at Newmark in June 2017.
Q So you were no longer at Cushman & Wakefield in 2017 when that note was written?
Yes.
Q nd I was starting to ask as a professional appraiser, would you use information that you would receive in 2013 in order to value an office building in Manhattan four years later in 2017?
There would have been most likely more current sales to look at.
THE COURT: You can answer that yes or no.
THE WITNESS: Yes. Could you repeat the question?
THE COURT: I think you better repeat the question.
MR. L DOV: Can we get a read back on the question, Your Honor?
THE COURT: Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
The answer is no.
Q nd actually, just to correct my question, I said

office building, but Niketown wasn't an office building, was it?
No. It's a retail property.
Q Thank you.
nd so I'd like to go to one more valuation from Niketown and this time from 2018. nd I'm going to show you a document in evidence as Plaintiff's Exhibit 774.
MR. L DOV: nd we can scroll down to line 91 -- sorry. 774 native one? If we can scroll down to the notes about the cap rate for Niketown in 2018?
Q So, again, if you can pull that up and read it for a moment. Mr. Larson, would you agree that the valuation methodology described in both of those notes for 2017 and 2018 is the same?
It's very close.
Q nd the only real difference that -- I guess there is two differences. One says that cap rates are usually 50 to 60 basis points and the other usually says they're almost 60 basis points. Is that what you're thinking about when you say they're close?
Yes, that's correct.
Q nd then in addition, the note for 2017 relies on the 2013 telephone conversation. We've talked about the note for 2018 is now relying on a September 14, 2018 conversation with Doug Larson correctly identified as Doug Larson of Newmark.
Mr. Larson, do you recall having a conversation on

September 14, 2018 where you advised anyone at the Trump Organization to value Niketown in this manner?
I don't recall that, no.
Q nd, again, were you aware in 2018 that the Trump Organization was stating that they were relying on you as a valuation professional in order to reach these values?
I was not aware.
Q nd once you saw this did you have any reaction to finding that your name was being used in these documents?
It's inappropriate and inaccurate.
Q nd why do you say that?
Because it should have been -- I should have been told and, you know, an appraisal should have been ordered.
Q nd you can't provide the kind of information to value a specific asset without ordering an appraisal and that kind of a formal engagement; correct?
Yes, you need a formal engagement.
Q So I want to move on to another property. We're going to look at a property called -- sorry. Excuse me. 1290 venue of the mericas and I'd like to show you a document marked as Plaintiff's Exhibit 1824 for identification.
Okay.
Q Mr. Larson, are you familiar with this document?
Yes, it's an appraisal of 1290 Sixth venue prepared for Deutsche Bank.

Q nd the date on this appraisal is as of November 1, 2012; is that correct?
Yes.
Q nd if you flip to page six, is that your signature, Mr. Larson?
Yes.
Q nd does this appraisal report accurately describe the information that you and your colleagues use to value 1290 venue of the mericas?
Yes, it does.
Q nd does this report accurately state your opinion of the value of 1290 venue of the mericas as of November 1, 2012?
Yes, it does.
MR. L DOV: Your Honor, I would move this into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It's in evidence.
Q So if we can flip to page four of the document, can you tell us what your opinion of the market value of 1290 venue of the mericas on November 1, 2012 was?
MR. L DOV: I think we need to scroll down a little bit more.
It was $2 billion.
MR. L DOV: nd then can we turn to page 11?
Q I want to show you some information from the summary.

gain, there is some information here?
MR. L DOV: It says -- actually, scroll -- yes. Down a tiny bit more, please. Thank you. Perfect.
Q So it says "direct capitalization" and we were talking about that before. So what's the cap rate that you used for direct capitalization analysis here?
The overall capitalization rate is 4.5 percent.
Q nd one other thing I want to point you to in this appraisal, it's on page 27. nd so I want to direct you to the sentence about midway down. It says, "The Trump Organization owns the remaining 30 percent minority interest in the property and the property being 1290 venue of the mericas" and explains that the rest of the interest is owned by Vornado Realty Trust. Do you see that?
Yes, I do.
Q So your appraisal of 1290 was of the value for the property as a whole; is that correct?
Yes.
Q Do you value minority interests in your practice as an appraiser?
No. We have specialists who do that in the appraisal group.
Q Why do you need a specialist?
Because there is a lot of variables to consider.
Q So it would be -- well -- strike that.

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nd does Cushman employ other appraisers besides yourself who specialize in valuing minority interests?
Yes, I do.
Q nd do you have any understanding of what they do to adjust the value based on those kinds of factors?
I have very little understanding of that.
Q Then I won't ask you anymore further questions about it.
So I want to turn back to the Supporting Data spreadsheet. This is going to be Exhibit 708 native at line 669. nd, again, so this is an analysis of Vornado Partnership Interest with Mr. Trump. It actually includes two properties, 1290 Sixth venue, which we were just looking at and 555 California Street.
So can I direct you to line 678 and 679? nd do you see there for 1290 Sixth venue there is an NOI listed of $93,271,000 in 2013 and then there is a value of slightly more than $2.9 million and it says, quote, "value based on a cap rate. See notes below."
Yes, I do see that.
Q So if we scroll down further in the page to line 704, we can see the cap rate note for 2013. nd here it says: "1290 based on information provided by Doug Larson of Cushman & Wakefield, which reflects a cap rate of 3.12 percent for a comparable office building on Fifth venue between 51st

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and 52nd Streets?" Is 3.12 percent the cap rate that you used to value this same property just a few months earlier?
No. No, it's not.
Q Did you advise Jeff McConney or anyone else at the Trump Organization to value this property in June -- as of June 2013 using a cap rate of 3.12 percent?
No, I did not.
Q nd is this valuation consistent with your opinion of value from the 2012 appraisal of the same property?
It is not.
MR. L DOV: nd actually, I just want to scroll up a little bit in the notes.
Q So that first note reads for 555 California. That's a property we weren't talking about, but it says "555 based on e-mail from Robert Farwell of Cushman & Wakefield in San Francisco, which also states a similar office building selling for $750 per square foot which equals $1,125,000,000 for 555."
Mr. Larson, do you know Robert Farwell?
Yes.
Q nd who he is?
He's an appraiser in San Francisco.
Q nd similarly, did you have any response to seeing his name listed in this document?
MR. KISE: Objection. Response same.
THE COURT: I'll ask for something more specific

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than that generality.
Q Do you recall a moment at which you first saw that Mr. Farwell's name was identified in this document?
Repeat that again.
Q Do you recall at some point in time first seeing this document and first seeing Robert Farwell's name in it?
When I've seen this? It was shown to me yesterday.
Q nd what reaction did you have to seeing Mr. Farwell's name in this document?
MR. KISE: Objection. gain, reaction.
MR. L DOV: Your Honor, we can move forward. That's fine. I withdraw the question.
THE COURT: ll right. You didn't even want to hear what I had to say?
MR. L DOV: I apologize. If we were going to win, you should hold off.
THE COURT: I don't think in terms of winners and losers, but if it could be a little more specific. I don't want to stop you from --
MR. L DOV: Your Honor, it's fine. We can move forward.
THE COURT: Okay. Then withdrawn, okay.
MR. L DOV: Question withdrawn.
Q So I do want to turn back to Plaintiff's Exhibit 707, and this is the Statement of Financial Condition. nd I want to

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turn to the bottom of page 19 and the top of page 20.
nd, again, it says Mr. Trump owns 30 percent of these properties. nd then scrolling down it says for 1290 venue of the mericas and 555 California Street, quote, "The estimated current value net of debt of $745,800,000 is based on an evaluation made by Mr. Trump in conjunction with his associates and outside professionals. This valuation was arrived at by applying a capitalization rate to the net operating income and taking into consideration any debt and return of capital."
Mr. Larson, you already testified that you do not value minority property interests; is that correct?
I do not.
Q nd again, to the extent that you are one of the outside professionals listed here, do you think it was accurate for this document to state that the estimated current value of Mr. Trump's minority interests in 1290 venue of the mericas was based on an evaluation made by Mr. Trump in conjunction with you?
MR. KISE: Objection, Your Honor. Mischaracterizes the evidence and this witness has no foundation to testify about this statement in the SOFC. It doesn't mention his name, it doesn't mention anything to do with Cushman & Wakefield. We don't know if that -- he's the outside professional or if it's any outside professional.
MR. W LL CE: I'm going to renew my objections to

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speaking objections, which are seemingly instructing -- to Mr. Kise's view of the evidence. If he has an objection to foundation, he should say "objection, foundation."

MR. KISE: I'm just explaining that it's a bench trial. I'm just explaining it, Judge.

MR. W LL CE: I'm not worried about the judge. I'm worried about the witness.

MR. KISE: I'm not worried about either one.

THE COURT: I appreciate the bode of confidence.

Well, the easiest way to rule on this is we haven't established he's the outside professional being referred to, so I'll sustain it on that and we'll rule on the other objections.

Q So let me ask you a different question, Mr. Larson:

Looking at the 2013 analysis of 1290 venue of the mericas, did Mr. McConney or anyone else at the Trump Organization determine the appropriate cap rate to use to value that property in conjunction with you?

MR. FIELDS: Objection. Speculation. He doesn't know what Mr. McConney did or didn't do.

MR. L DOV: I'm asking whether he did work in conjunction with Mr. McConney.

THE COURT: Overruled. If the witness knows the answer to the question.

MR. KISE: That wasn't a question, though, Your

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Honor. The question was did he do something. It wasn't did he work with Mr. Larson. I can read it right there.

THE COURT: Well --

MR. KISE: The question was did Mr. McConney do X, not did Mr. McConney work with Mr. Larson to do X. Big difference.

MR. L DOV: I think it's for the witness to determine whether he understands the question or not.

nd again, I don't think Mr. Kise should be having these speaking objections in front of the witness.

THE COURT: Let's either -- I rather you just rephrase the question. So without prejudice, I'll ask the witness to -- the attorney to rephrase the question.

Q So let me withdraw that question, Mr. Larson.

Did you work with Mr. McConney in 2013 to determine the cap rate that he used to value this property?

No, I did not.

THE COURT: ll right. Remember to keep your voice up. The answer was no, I did not?

THE WITNESS: Correct, I did not.

Q So let's move forward. I have a couple of documents to show you for the purpose of putting them into evidence.

So the first one I want to show you is a document marked for identification as Plaintiff's Exhibit 238. nd if you could scroll down to page two of this document.

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Mr. Larson, do you recognize this document?

Yes. This is an appraisal of 40 Wall Street as of October 1, 2010.

Q nd I think you said October 1st, but is it correct that --

ugust 1st. I misread.

Q nd if we turn to page five of this document. Is that your signature, Mr. Larson?

Yes.

Q Does this appraisal report accurately describe the information that you and your colleagues received to value 40 Wall Street in 2010?

Yes.

Q nd does this report accurately state your opinion of the value of 40 Wall Street as of ugust 1, 2010?

Yes.

MR. L DOV: So, Your Honor, I'd move this document into evidence.

MR. ROBERT: Objection, Your Honor, in addition to -- this is an appraisal from 14 years ago. This is outside even the ttorney General's own scope of what is potentially at issue in this case. Our view is this is 2016 to date. Their view is it goes back to 2014 or even earlier, but there is no dispute as far as I'm aware of anything going back to 2010. So on top of everything else, it's

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irrelevant.

MR. L DOV: So, Your Honor, I would just say you have repeatedly explained that there is no statute of limitations bar on evidence. We will tie this evidence to the relevant claims in this case within the statute of limitations, but there is absolutely no basis for barring this admission.

MR. ROBERT: Your Honor, I'm appalled to hear that there is no limitation on irrelevant evidence from 14 years ago on an appraisal when that is not part of their 300 paragraph complaint. So, again, I would renew my objection on relevance and statute of limitations.

MR. W LL CE: Your Honor, I'm apologizing for speaking over my colleague, but I will say we have already established that the 2011 Statements of Financial Condition are considered by Deutsche Bank throughout the entire period that the Deutsche Bank loans were open -- information from 2010 was in the files of the Trump Organization. This information was available to the Trump Organization at the time they were making representations.

They are free to argue that the evidence should not be granted much weight, that it doesn't matter, but the idea that it's not relevant is simply not accurate and the fact that this appraisal was prepared at the time and was in the files of the Trump Organization is part of the record and is

an appropriate part of the record.

MR. ROBERT: Your Honor, Deutsche Bank was clear that they did not rely on the Statements of Financial Condition and the values contained therein. Deutsche Bank's testimony was clear that they relied on the Deutsche Bank values that came from Deutsche Bank Valuation Services Group. This is not from the Statement of Financial Condition.

MR. W LL CE: This is a closing argument, not a factual objection.

MR. ROBERT: You're making a whole speech here. I started out with a simple objection then you added something, Mr. Wallace. I'm just putting context to why we think this is relevant and improper.

MR. W LL CE: I think the record will show how simple the objection is.

MR. ROBERT: I'll let the record speak for itself.

THE COURT: In terms of relevancy, subject to connection. If it was irrelevant, it's irrelevant.

lso, I don't think the trier of fact has to agree that Deutsche Bank didn't rely on it, so overruled.

sk again, read back?

MR. L DOV: I -- well, I think we moved it into evidence, Your Honor, by overruling the objection.

THE COURT: I'm sorry. It's in evidence.

Just for the benefit of everybody, statute of limitations bars claims not in evidence. Of course, you can argue that the evidence is irrelevant, but that's not been established, okay?

Q So Mr. Larson, I'm actually going to take this document down and show you a document. It was actually introduced earlier this morning for identification as Plaintiff's Exhibit 1573, so I believe that defendants should have a copy of it from this morning.

THE COURT: It will be on the screen anyway.

Q So Mr. Larson, do you recognize this document?

Yes. It is an appraisal of 40 Wall Street prepared for Capital One bank as of November 1, 2011.

Q nd if we scroll to page five, Mr. Larson, is that your signature?

Yes, it is.

Q nd does this appraisal report accurately describe the information that you and your colleagues received to value 40 Wall Street in 2011?

Yes.

Q nd does this report accurately state your opinion of the value of 40 Wall Street as of ugust 1, 2011?

Yes.

MR. L DOV: So, Your Honor, I believe that this was introduced earlier, but I would at this point move it into

evidence for all purposes.

THE COURT: Granted. It's in evidence for all purposes.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1573 in evidence.)

Q nd I can take this document down and show you one more appraisal. It's -- I'm going to show you a document marked as Plaintiff's Exhibit 121, and can we turn to page two of this document.

Mr. Larson, do you recognize this document?

Yes.

Q nd what is it?

This is an appraisal of 40 Wall Street prepared for Capital One Bank as of November 1, 2012.

Q nd if we turn to page six, can you tell me if that's your signature?

Yes, it is.

Q nd does this appraisal report accurately describe the information you and your colleagues use to value 40 Wall Street in 2012?

Yes, it does.

Q nd does this report accurately state your opinion of the value of 40 Wall Street as of November 1, 2012?

Yes, it does.

MR. L DOV: Your Honor, I would move this document into evidence.

MR. FIELDS: Statute of limitations.

THE COURT: Overruled. It's in evidence.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 121 in evidence.)

Q So we can take this down and we'll take a couple more minutes, Mr. Larson, with one more document that was already introduced as Plaintiff's Exhibit 118. nd we had looked at this earlier. It's the 2015 appraisal of 40 Wall Street.

MR. L DOV: nd can we turn to page 136 of this appraisal report? nd actually, if you can scroll down a little bit just to the bottom of 136 and the top of page 137.

Q Yes, so it says here "market rental rate retail space" and the first sentence reads, quote, "The subject property is leased to four retail tenants that include Dean & DeLuca and Neapolitan Express along the Wall Street side of the building. Neapolitan Express leases 550 square feet on the grade while Dean & DeLuca leases 18,500 square feet on the grade."

nd then if you go down a little bit down here you can see mention of the Dean & DeLuca lease with a contract rent of $1.4 million. Do you see all of that?

Yes, I do.

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Q And this is part of a section of your appraisal report entitled, "Income Capitalization Approach." And you talked about that earlier; correct?
Yes.
Q So do you know whether this $1.4 million lease with Dean & DeLuca was included in your valuation of the property's income in this 2015 appraisal?
Yes, it would have been.
Q And if we can turn to page 15 and look at the bottom of the page -- and this is the direct capitalization analysis.
So, again, just to confirm that net operating income number that includes the income from the Dean & DeLuca lease; is that right?
That is correct.
Q And then you applied a 4.25 percent capitalization rate to that net operating income; is that right?
Yes.
Q And you did a couple of adjustments, but the final value of $540 million that was consistent with your opinion of the value of 40 Wall Street at that time; is that right?
Yes, that's correct.
Q So next I'd like to show you a document that has been admitted as Exhibit 3004 native 01 and it's a spreadsheet similar to the ones that we were looking at.
I would like to scroll down to lines 117 through 136.

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And I can show you here there is a reference here in the 2015 line to a $540 million Cushman & Wakefield appraisal done June 2015 for loan refinancing of Ladder. That's the appraisal we've been looking at; is that right?
Yes.
Q And then you can also see in addition to that $540 million there is additional value listed of $120,348.
Do you see that?
Yes, I do.
Q And part of that additional value is derived by taking the vacant retail space lease with Dean & DeLuca of $1.4 million and applying a 3.04 percent cap rate to it. Do you see that?
Yes.
Q So you already included the Dean & DeLuca lease in your $540 million valuation; correct?
That is correct.
Q So is this $660 million valuation, is that double counting the Dean & DeLuca lease?
I'm not sure, you know, what they did. I know my -- in the -- in my June 2015 appraisal Dean & DeLuca was included in the valuation.
Q So that's fine. And then I guess the other question I would ask they applied -- whoever did this analysis applied a cap rate of 3.04 percent. Is that the same cap rate that you used to determine the value of 40 Wall Street in 2015?

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No, it's not.
THE COURT: Five-minute warning.
MR. LADOV: I think that's fine, Your Honor. I think I actually have one more document to show the witness.
Can we turn to Plaintiff's Exhibit 731 native?
Q And this is another version of the Statement of Financial Condition Supporting Data for 2015. And looking at -- actually, sorry.
MR. LADOV: Can we scroll down to line 117?
Q And so this is another analysis of the value of 40 Wall Street in 2015. And do you see here that the value reached in this document is now $735 million?
Yes, 735,400,000?
Q Correct.
Yes.
Q And then, again, looking at this document, do you see any mention up here of the appraisal that you performed?
No, I do not.
Q And this valuation is reached by applying a 3.29 cap rate to an NOI of $24,194,280. Do you see that?
Yes.
Q And again, 3.29 percent, is that the cap rate that you used in your appraisal in 2015?
It is not.
Q And looking at the note there at the bottom and it says

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for June 30, 2015, quote, "Based on information provided by Douglas Larson of Cushman & Wakefield on 11/23/2015, which reflects a 3.04 percent for 100 Wall Street," and then it says "based on a telephone conversation with Doug Larson on 2/1/2016 since the ground lease still has about 190 years left, the effect on the cap rate is minimal to be conservative. We increased the cap rate from .25 percent to 3.29 percent."
So, again, Mr. Larson, did you work with Mr. McConney or anyone else at the Trump Organization to value 40 Wall Street in this manner for the 2015 Statement of Financial Condition?
No, I did not.
Q And the cap rate that's described here is not the cap rate that you used in your appraisal in 2015; is that correct?
Just repeat that again.
Q Sure. The cap rate here of 3.29 percent, that's a different cap rate than the 4.25 percent cap rate that you used in your appraisal; is that right?
Yes, that is correct.
Q And then finally, I'd like to turn to the Statement of Financial Condition of Mr. Trump as of June 30, 2015. This is Document 729. And I'd like to turn to the top of page nine.
And Mr. Larson, you can see it says, quote, "The estimated current value of $735,400,000" --
MR. KISE: Your Honor, this is going to be the same objection.

MR. L DOV: I haven't even finished --
MR. KISE: I know, but I can read it. Let's just save ourselves the time.
THE COURT: No, let him read it and we can discuss. We have two minutes.
So you want to re-read the whole thing?
MR. L DOV: I'll start again, Your Honor.
Q So the text at the top of this page says, quote, "The estimated current value of $735,400,000 is based upon an evaluation made by Mr. Trump in conjunction with his associates and outside professionals of leases that have been signed or are currently the subject of negotiation and a capitalization rate applied to the resulting cash flow to be derived from the building's operations."
So Mr. Larson, is this estimated current value of 735,400,000 consistent with your opinion of value for 40 Wall Street in June 2015?
No, it is not.
Q nd did you work with Mr. McConney or anyone else at the Trump Organization to determine the capitalization rate used to generate this valuation of $735 million?
No, I did not.
MR. L DOV: I have no further questions, Your Honor.
THE COURT: Finished with this witness?

MR. L DOV: Yes.
THE COURT: ny cross examination of this witness at this time?
MR. FIELDS: Yes, Your Honor.
THE COURT: So after lunch break.
Okay. We'll be back at 2:15 everyone. Have a good lunch.
(Whereupon, there is a luncheon recess in the proceedings.)
Transcript continues on the following page....

F T E R N O O N S E S S I O N
* * * * *
THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Please be seated and come to order.
THE COURT: Welcome back, everybody, some of you. I understand we have some cross-examination by counsel.
MR. FIELDS: Yes, Your Honor. May it please the Court, Mr. Lazaro Fields for President Trump on the defense.
THE COURT OFFICER: Witness entering.
(Witness resumes the stand.)
THE COURT: Okay. Welcome book. Let's begin with the cross-examination of Mr. Larson.
MR. FIELDS: Thank you, your Honor.
CROSS-EX MIN TION
BY MR. FIELDS:
Q Good afternoon, Mr. Larson.
Hello.
Q My name is Lazaro Fields. I'm going to ask you a couple of questions, okay?
Okay.
Q Mr. Larson, on direct examination, you were asked by counsel about valuations and appraisals. Do you recall those lines of questions?
Yes.

Q nd you understand that there is a difference between a valuation and appraisal; is that correct?
They are the same thing.
Q valuation and an appraisal is the same thing; is that your testimony?
But the words can be used interchangeably.
Q Isn't it true, Mr. Larson, that a real estate developer can value their properties, correct?
Yes.
Q That doesn't mean that a real estate developer is conducting an appraisal of their property, correct?
Yes, that would be correct.
Q Because a real estate developer, unless they are a certified appraiser, cannot conduct an appraisal; is that correct?
Yes, that would be -- that would make sense.
Q So now would you agree with me, Mr. Larson, that appraisals and valuations are different?
n appraisal is a very detailed, organized appraisal, yes. It's an -- sometimes the terms are used loosely together.
Q But an appraisal -- strike that. Withdrawn.
valuation is not necessarily an appraisal, correct?
Like I said, the terms are used interchangeably together, but an appraisal is a term that's used by appraisers in compliance with USP P.

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Q n appraisal is a term of art; is that correct?
ppraisal is an -- is an estimate of a market value.
Q Is it a term of art?
It's a -- it would really be -- I don't know if you call it a term of art. I'm not sure.
Q Okay. But you would agree with me that if I said that I, as a property developer, valued my property, that does not necessarily mean that I conducted an appraisal of my property, correct?
Unless you're a certified appraiser, it would not be an appraisal. It would not be an appraisal, you know, a formal appraisal, no.
Q But it would be a valuation, correct?
I guess you could say that.
Q nd there's nothing that prohibits President Trump as a real estate developer from valuing his own properties; is that correct.
I wouldn't know any -- I don't know.
Q I want to be very clear, Mr. Larson. My question is there's nothing from prohibiting President Trump from valuing his own properties, correct?
Not that I know of.
Q ll right. Do you remember being interviewed by the ttorney General's office on October 29th of 2019?
Yes.

D. L RSON - CROSS(MR. FIELDS) Page 1611

Q nd there was a record taken of your testimony that day; is that right?
Yes.
Q Have you looked at your testimony since that day?
I've looked at it once, yes.
Q When did you look at it?
Weeks ago.
Q I'm going to direct you to page 207, line five that will be pulled up on the screen here.
Okay.
Q Do you recall being asked:
"QUESTION: Is that something you would have found significant or remembered? Do you remember it?
" NSWER: No, I don't remember this, and I'm sure owners value their own properties, so it is nothing that stands out."
That was your testimony, correct?
Yes.
Q I'll direct you to page 166, line seven:
"QUESTION: So you would say this valuation is inaccurate?
" NSWER: It's not my valuation. Yes, it could be his valuation or Trump's valuation, but it's not my valuation."
So you would agree nothing prohibits President

D. L RSON - CROSS(MR. FIELDS) Page 1612

Trump as a real estate developer from valuing his property, correct?
Yes. I guess anybody can do their own valuation.
Q Just because President Trump or any of his designees value their own properties doesn't necessarily mean that he's conducting an appraisal of his own property; is that correct?
To prepare an appraisal by an appraiser, professional appraisal, you need to be licensed and meet the requirements of USP P.
Q So would the answer to my question be no?
Just repeat the question again, so I don't get lost.
MR. FIELDS: May I have a readback, Your Honor.
THE COURT: Yes, read back, please.
(Whereupon, the requested portion of the record was read back.)
So could you ask it another way, so I understand? I'm sorry. Just want to make sure I'm clear.
Q So Mr. Larson, we've established that valuations and appraisals are two different concepts, correct?
MR. L DOV: Objection.
THE COURT: Yes and no. I don't know that I would let that stand because he said they're interchangeable, but they're also different. Look, I think the term "valuation," it can mean an appraisal, but the fact that somebody owns property or even doesn't own it, they could put a value on

D. L RSON - CROSS(MR. FIELDS) Page 1613

it in their head or on paper. So I don't know that I would totally agree with the premise of your question. I didn't hear the question. I only heard the premise.
MR. FIELDS: So let me back up.
Q Mr. Larson, we've established that nothing prohibited President -- prohibits President Trump or anyone from valuing a property without doing an appraisal, right?
Yes. nybody can value their -- their own property.
Q nd as far as you are aware, there is nothing illegal or unethical about anyone valuing property without doing an appraisal, correct?
I'm not aware.
Q In terms of the manner in which you value property and I want to use the word "value" deliberately. When you value property, do you apply one of the three valuation methods generally?
Correct.
Q nd those methods are the cost method, the income method and the sales comparable method; is that right?
Yes.
Q Now, when you conduct an appraisal, do you also use those same three methods to appraise the value of a property?
The market will dictate what appraisal methodology you use or what -- whether or not you use the cost approach, sales approach or income capitalization approach. The market will

dictate that.
Q But you would agree with me that when you appraise a property, you use one of those three methods?
One or two typically in New York. Cost approach is typically not applied.
Q Let me ask it another way. Is there another method other than the three that we've just discussed that you would employ to appraise the value of a property?
No.
Q Okay. So then we can agree that the universe of methods available to you or to anyone to value or appraise a property are the three that we've just discussed; namely, the cost approach, the income approach or the sales comparable approach?
Yes.
Q nd your testimony a minute ago was that the cost approach is generally disfavored in New York City; is that correct?
It's typically not used.
Q nd why is that?
Because there's a lot of depreciation, older buildings in New York which make it less reliable.
Q For both commercial and residential?
I -- I can only speak to office, in commercial.
Q The income and sales comp approaches are the methods

that are most often used to appraise the value of property, specifically commercial property in New York City; would that be fair?
Yes.
Q Would you be able to speak to the method used to value properties outside of New York City?
The methods would be the same outside New York City.
Q So the methods that one would use in Miami, for instance, for a commercial property would be the same methods that would be employed in New York City; is that right?
Yes, an appraiser would use the cost approach, income approach or sales comparison approach.
Q nd to be clear, those are approaches would be the same regardless of whether you're valuing a property or appraising a property?
It's -- the names of valuation or the term "valuation" or "appraisal," you know, are used interchangeably. When an appraiser does an appraisal, it's an appraisal and we identify it as appraisers as an appraisal report.
Q But when President Trump values his property, it is not an appraisal, correct?
nybody valuing their properties can call it whatever they want.
Q But when President Trump values his properties, it is not an appraisal, correct?

MR. L DOV: Objection; asked and answered.
THE COURT: I'm generally very liberal on asked and answered.
MR. FIELDS: It is a yes-or-no question.
THE COURT: Sorry, what?
MR. FIELDS: It was a yes-or-no question.
THE COURT: Is it a question or is it just something you're trying to tell us?
MR. FIELDS: It is, Your Honor. The reason why is on direct examination, the witness testified and used the terms interchangeably and he has just testified that the two are different, that an appraisal is something that only an appraiser can do and when President Trump has financial statements that have values, that doesn't necessarily mean they are appraised numbers which this witness testified earlier that he had hoped they were.
MR. L DOV: Objection. It misstates the prior testimony.
THE COURT: Maybe we can all agree. We all know what an appraisal is. It is kind of official. It is formal. You have to be an appraiser, et cetera. The term "value," "valuation" is much looser. Somebody could use valuation to mean an appraisal and that's what the witness said, they're interchangeable. Somebody else could just say, well, the value of my property is X dollars. So I

think that kind of sums it up. I don't know what else there is to say.
Mr. Kise, do you agree or disagree?
MR. KISE: I don't disagree. t least you and I don't disagree. I don't think Mr. Fields and I disagree. The problem is the witness won't say it. For whatever reasons, he's being evasive.
MR. L DOV: Objection.
MR. KISE: You can object all you want. It is pretty obvious only appraisers can do appraisals. They are the only licensed people that can do appraisals. That's it. It's a real simple answer. It is a yes-or-no question. He has refused to give yes-or-no answers and I would ask the Court to admonish the witness like every witness that has come here and say, "If you can answer it yes or no, answer it yes or no." But he is clearly being evasive. I don't know why because it is such a basic question.
MR. L DOV: They are badgering the witness and they are misstating the testimony.
THE COURT: What if we did this? Try to write on a clean slate somewhat. sk the question. If it is yes or no, and I think it can be answered yes or no, I'll direct the witness to answer it yes or no unless he says he can't.
MR. FIELDS: I apologize, but may I have a readback of my last question?

THE COURT: Of course.
(Whereupon, the requested portion of the record was read back.)
The terms are used interchangeably. So you can call it an appraisal. You can call it a valuation, whatever they want to call it. They're used interchangeably.
Q ll right. Mr. Larson, on direct examination, you were examined about several appraisals that you conducted for 40 Wall Street. Do you remember those?
Yes.
Q nd you appraised that property in 2011, 2012 and 2015; is that correct?
I don't know the exact dates.
Q Well --
They sound approximately right.
Q Okay. We'll walk through it, but you would agree that the appraisals that you conducted for 40 Wall Street were based on, as we've discussed, the income approach and also the sales comparable approach, correct?
Yes.
Q nd the income approach, there are two -- I'll call them sub-approaches and maybe you have a different terminology for them, but there is the discounted cash flow analysis and a direct capitalization analysis. re you aware of what those are?

Yes.
Q nd generally, what is the discounted cash flow analysis?
Discounted cash flow analysis is typically a lease-by-lease analysis with assumptions for tenants on rollover. So it is a very detailed exercise.
Q nd what are you trying to discount or what are you trying to solve for?
You solve for a value of the property.
Q Present or future?
It could be at a point. It could be a current value or a perspective value.
Q nd when you say "current value," you say -- do you mean a current market value?
Yes.
Q That is different from a current investment value; is that right?
Yes.
Q You're aware of what an investment value is?
Yes.
Q What's the difference between an investment value and a market value?
market value has a definition that state under certain conditions -- I'd have to look at the definition again. nd an investment value are typically -- again, look -- without

looking at the definition, it would be under certain assumptions that would be provided to you as an appraiser.
Q nd you've been an appraiser for how many years, Mr. Larson?
30 years.
Q Could you give me based on your 30 years experience your best understanding of what current market value is?
So it is a market value that's unbiased. market value would be as of a certain date, you know, taking into account market conditions of the time. So I would have to look at a definition to be more exact.
Q Would you agree with me that a market value is akin to a value today?
Right.
Q nd an investment value is a value upon a future date, correct?
It doesn't have to be.
Q But it could be?
Could be.
Q nd as far as you are aware -- or withdrawn. Can an appraiser do an investment value appraisal?
Yes.
Q Have you done those yourself?
I don't recall. I don't remember doing one.
Q It's not something that you have done regularly; is

that fair?
Yes, it is not a regular practice.
Q re there appraisers that specialize in doing investment value appraisals?
There could be. I don't -- I'm not sure.
Q But you are aware that investment value appraisals are a thing for lack of a better term?
It -- yes. It's -- that -- that could happen.
Q nd would you agree with me that real estate developers generally request investment value appraisals to determine what the future value of their investment could be?
Just repeat that again, so I can answer it accurately.
Q Would you agree with me that real estate appraisers often request investment value appraisals to determine what the value of their investment in the future will be?
So you're -- you're asking me if appraisers request investment value appraisals or the clients?
Q Real estate developers.
Real estate developers. Yes, that could happen.
Q That would be different than an appraisal that looks at the market value of a piece of property today, right?
That would be a different value, yes.
Q Because it would be today's value?
Yes.
Q nd often the development value appraisals are based on

assumptions into the future; is that fair?
I guess they could be.
Q Now, to be clear, the appraisals that you signed in this case for 40 Wall Street were market value appraisals, right?
Yes.
Q nd the entities that hired you or retained you to do these appraisals were financial institutions, right?
Yes, they were lenders.
Q Is that common in your industry to be hired to do lender appraisals?
The majority of our work is for lender appraisals, yes.
Q When a lender -- withdrawn.
When a lender retains you to conduct an appraisal on their behalf, your analysis is retrospective; is that fair?
We define, you know, the date of the appraisal, the date of the value, and it could be retrospective. It could be a market value as is or it could be a perspective value.
Q The data that you rely on is data that you obtain from the past, right?
Yes, but we ask for the most current information.
Q Isn't the general understanding in the industry that lender-ordered appraisals are intended to provide the bank with what the liquidation value of a particular property would be?
liquidation value is a different definition.

Q Do you understand what that means?
Yeah. I'd have to look at the definition again to be clear about it, but there is a value called liquidation value which has certain assumptions regarding marketing period and time to sell.
Q What is your understanding of what a liquidation value is based on your 30 years of experience in the industry?
liquidation value is potentially for a quick sale and, you know -- but the value would need to be defined and, you know, the marketing period would need to be addressed, the time of sale.
Q So back to my original question, would you agree with me that it's commonly known in the industry that lender-ordered appraisals -- in lender-ordered appraisals, the lender is generally looking at liquidation value to know what they will get for the property in a quick sale?
They could be and they would request that value.
Q But you as an appraiser know that when you're conducting an appraisal for a lender, that the lender is looking for a liquidation value, correct?
MR. L DOV: Objection; asked and answered.
THE COURT: sked and answered. But again, not my favorite objection. So if there is a different answer, there is a different answer. Same answer, it is the same answer. You can ask it again without prejudice, not more

than five or six times, okay.
MR. FIELDS: I certainly won't.
THE COURT: Can you ask it again or do you need a readback?
MR. FIELDS: t the risk of annoying the court reporter, I'm going to ask for a readback with Your Honor's indulgence.
THE COURT: They have a lot of patience.
Read back, please.
(Whereupon, the requested portion of the record was read back.)
The appraiser -- when we're asked to do an appraisal, it's requested to be either a market value as is. It could be a liquidation value. It could be other -- they would need to be identified in the engagement letter and difference between the market value as is or liquidation value, those are different types of values.
(Continued on the next page.)

Q Whether the lender asks you for a liquidation value appraisal as an appraiser based on your experience, though, do you employ a concert of assumptions to assure the lender of a value they could get in a quick sale situation?
We would have to be asked to provide that analysis.
Q Were -- to the best of your recollection, were you asked to provide that analysis for the 2011, 2012 and 2015 40 Wall Street appraisals?
I would have to look at the appraisals and see what was requested and what values were provided.
MR. FIELDS: ll right. Let's turn to Plaintiff's Exhibit 1573 that's been admitted, I believe.
Q Mr. Larson, does this look like the appraisal that you conducted for 40 Wall Street dated November 1, 2011?
Yes.
Q nd on the cover page it says it's prepared for Capital One Bank; correct?
Yes.
MR. FIELDS: nd if we can go to page three?
Q Is this the transmittal letter?
That is correct.
Q nd this would be coming from you and directed to Capital One Bank; is that right?
Yes.
Q If you look at the second full paragraph beginning with

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this report, it says, "This report was prepared for Capital One Bank and is intended only for its specified use. It may be distributed to the client's attorneys, accountants, advisors, investors, lenders, potential mortgage participants, and rating agencies. It may not be distributed to or relied upon by other persons or entities without written permission of Cushman & Wakefield, Inc."

Do you see in the second line where it says "the client?" "The client's attorneys?"

Yes.

Q Who is the client?

Capital One Bank.

Q So to be clear, this appraisal that you conducted was prepared for Capital One Bank and that was your client; right?

Yes.

Q nd the appraisal explicitly notes that it's only intended for Capital One Bank's specified use; is that right?

s well as -- yes, that's correct.

Q nd I think you were going to say as well as Capital One Bank's attorneys, accountants, advisors, investors, lenders potential mortgage participants, and rating agencies?

Yes.

Q None of those individuals or entities that are mentioned right there are the Trump Organization; correct?

I don't see their name in there, no.

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Q My question is based on this disclaimer would the Trump Organization fall into any of these specified individuals or entities?

It doesn't appear to be, no.

Q nd then at the bottom of page three you've identified a "Market Value s Is" as of November 1, 2011 of $200 million; is that right?

Yes.

MR. FIELDS: nd if we can flip to the next page, page four?

Q Here you identify a prospective market value of $270 million as of November 1, 2014; is that right?

Yes.

Q nd it says at the top "based on the agreed to scope of work and as outlined in this report" -- excuse me -- "the report, we have developed an opinion that the prospective market value of a leasehold estate of a referenced property subject to the assumptions, limit conditions, certifications and definitions on November 1, 2014 will be $270 million?"

Yes.

Q nd what are the assumptions that appraisers generally employ to obtain a future value like this prospective value?

It's -- using a prospective value is using today's assumption -- today's information about the property in making forecasts.

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Q nd in making a forecast you would agree with me that an appraiser is -- is applying his or her professional judgment to available data to arrive at a present or future value; is that right?

Yes.

Q nd the -- and there is a wealth of available data that appraisers can look at to value a particular property -- withdrawn.

nd there is a wealth of available data appraisers can look at to appraise a property on a present or future date; is that right?

Yes. The -- we're -- as appraisers you are projecting a prospective value in the future certain assumptions need to be made and -- but you need to start with the assumptions that you know today and the market information about this -- about a building today; the rent roll and expenses and other information.

Q But even in terms of arriving at a present value an appraiser has to make certain determinations based on available data; right?

Correct.

Q nd the available data -- withdrawn.

re these generally known as subjective factors that appraisers look to to arrive at a present or future value?

Yes.

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Q nd what are some of those subjective factors?

Growth rates for income and expenses where changes in cap rates and there is a variety of things you could -- you would have to look at.

Q Sales comparables as well?

The sales comparables you know what's transacting as of your most current information.

Q But it's a factor? The recent sales --

Factor to look at sales, yes.

Q Selection of markets is also a factor; correct?

Yes.

Q Discount rates as well?

Yes.

Q Determining the highest and best use of a particular property as well?

Correct.

Q Real estate cycles?

Yes.

Q So would you agree with me then that appraisals are an art not a science?

That term has been used before, but it's -- it's a -- it's an estimate of market value by the appraiser based on experience, knowledge of the market and their best estimate at the time they're doing the appraisal.

Q But do you agree that an appraisal is an art not a

science?
I've heard that term before. I would probably agree with it, yes.
Q Okay. nd to give you an example, we're standing in this courthouse. Could two appraisers equally qualified appraise the value of this property they were standing in today based on the same exact data at two different numbers?
Yes.
Q nd is that because one appraiser may give a little bit more weight to some factors that the other appraiser may give a little less weight to?
Yes.
Q nd vice versa?
Correct.
MR. FIELDS: ll right. If we could flip to page five of the 2011 report, please?
Q Could we establish, Mr. Larson, that your signature and the signature of Mr. Nardella and Mr. Papagianopoulos appear on the report; correct?
Yes.
Q nd Mr. Nardella at the time of this report was your supervisor; is that right?
Yes.
Q nd you worked closely with Mr. Nardella?
Yes.

Q Do you have any reason to question Mr. Nardella's judgment?
No, not at all.
MR. FIELDS: ll right. If we could flip to page eight, please?
Q So you see, Mr. Larson, at the top it says, "Income Capitalization Reports Discounted Cash Flow;" right?
Yes.
Q This is the beginning of your discounted cash flow analysis for this property on this year; right?
Yes.
Q nd then if we could move to page ten in the middle of the page where it says "direct capitalization" in bold?
This is now the direct capitalization analysis of this property; is that right?
Yes.
Q So it would be separate from the discounted cash flow analysis but related?
Yes. It's -- it's one of the indications that you could -- that's used to value a property by the income approach.
Q Do you use the direct capitalization method to double check your work on the discounted cash flow analysis?
Yes, commonly it's a secondary approach.
Q nd you chose a capitalization rate here of seven percent; right?

Yes.
MR. FIELDS: nd if we could move to page 20, please?
Q In the middle of the page it says "intended use and users of the appraisal."
Under "intended use," it says, "this appraisal is intended to provide an opinion of the market value of the leasehold interest in the property for loan underwriting and/or credit decisions. ll 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?
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?
Yes.
Q nd 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?
Yes.
Q Under "intended user," it says "this appraisal report was prepared for the exclusive use of Capital One Bank and/or

JCL

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. ll other uses and users are unintended. It may be distributed to the client's attorneys, accountants, advisors and investors."

fter 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?

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?

We look at both asking rents and taking rents.

Q I'm sorry?

We look at both asking rents and taking rents.

Q Taking?

Taking rents or leases that are actually signed.

Q nd what do you use the asking rent figure for as part of the appraisal?

JCL

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?

It was part of the information we reviewed at the time of the appraisal.

Q But my question is did you rely on it?

Yes, we relied on it.

Q nd did the asking rents inform you when you project what a future value might be for that same property?

Not necessarily.

Q So what information do you use when you project a future prospective value with an appraisal?

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?

That was the asking rent as of the third quarter.

Q nd my question is is that the figure that you used in determining the market rent for this appraisal?

Yes.

Q nd then when you value the property or appraise the property into the future the $39.10 per square foot was your

base and you use that to then predict future value?

s 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?

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?

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 nd where are you reading from? What page on the bottom?

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?

It's better to do it floor by floor because rents change in the building with height.

MR. FIELDS: ll right. If we can move to page 43, please?

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?

Yes.

Q nd at this time in 2011 there was more positivity in the commercial real estate market; is that right?

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?

Yes, that's what that essentially says.

Q Things were looking up, not down; right?

Correct.

MR. FIELDS: If we could turn to page 59?

Q In the middle of the page under the heading " ssessment Information" you note that in 2011, 2012, the total assessed value for this property was $71 million; is that right?

Yes.

Q nd to be clear, you did not rely on the assessed value of the property in determining your appraisal number?

We do rely on this as value.

Q But your appraisal figure was north of -- or 200 million; right?

Right.

Q Not 71 million?

Right. Those are two different things.

Q Completely different things?

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?

Yes.

Q nd 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?

Yes.

Q nd then if we back out to the third paragraph that

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begins with "the nine major office tenants." "The nine major office tenants previously mentioned?"

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?

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?

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?

Yes.

Q "These changes in market conditions result in C&W's leasing brokerage group in downtown Manhattan to forecast the following rent growths."

nd 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

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beginning in 2012." What does this three percent growth rate represent?

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?

It's the rent growth assumption for market rent.

Q nd --

Not asking rents.

Q So the market rent figure would be the one that you read five minutes or so ago; is that right?

Yes.

Q So you are assuming a three percent growth of that figure -- forgive me. Do you remember exactly what it was?

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?

Yes.

Q nd this growth rate would not start until the end of 2012 beginning of 2013; is that right?

Yes.

Q So for 2011 and 2012, the growth rate would be zero?

Yes.

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Q How did you arrive at this growth rate?

How did I -- can you repeat the question?

Q How did you come up with this growth rate?

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?

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?

Yes.

Q nd would you agree with me that an equally qualified appraiser such as yourself could have arrived at a different growth rate?

Yes.

Q nd that equally qualified appraiser could have arrived at a growth rate that was higher than three percent; correct?

Possibly, yes.

Q nd in turn, that growth rate would have driven up the property value for those future years; correct?

Yes, possibly.

THE COURT: Five-minute warning.

MR. FIELDS: ll right. If we could go to

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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?"

Yes.

Q nd this is the net operating income that's used to divide by a capitalization rate to ultimately arrive at a property value; correct?

Yes.

Q Net operating income and net income are two different concepts; correct?

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?

That sounds like more of an accounting, you know, calculation.

Q My question is are you familiar with that general terminology?

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?

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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?

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?

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?

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?

Yes.

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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?

Yes.

Q nd a couple of lines down you see in the middle where it says "No part of the report?"

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?

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?

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....

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT OFFICER: Witness entering.

THE COURT: Let's continue with the cross-examination.

MR. FIELDS: Thank you, your Honor.

Q Good afternoon again, Mr. Larson. I would like to move forward a year to November 2012 when you finalized an appraisal for 40 Wall Street and I believe it's -- it is not in front of you. It will be hopefully in a moment. It is Exhibit 121 that's been admitted in evidence.

MR. FIELDS: For the record, that's Plaintiff's 121.

Q Do you recall being asked this morning by counsel for the government about this appraisal, Plaintiff's Exhibit 121?

Repeat that again.

Q Do you recall having a discussion with counsel for the government earlier in the day about this appraisal that you finalized in November of 2012 or thereabouts?

Yes.

Q This is your appraisal, right? If we can go to page six. This is your signature on page six as well as the signatures of Mr. Papagianopoulos and Mr. Nardella?

Yes.

Q nd for this appraisal in -- if we go to page four,

you identified or concluded that the market value as is as of November 1, 2012 was $200,000,000, correct?

Yes.

Q nd then on page five, you identified or concluded perspective market value as of November 1, 2015 for $240 million.

Yes.

Q Is this the final appraisal that you submitted to the client in November of 2012 or thereabouts?

Yes.

MR. FIELDS: Let's bring up Plaintiff's 1435 that has not been admitted in evidence. If we could go to page five.

Q Is this your signature here, Mr. Larson, and also the signatures of your colleagues?

Yes.

Q nd back to the first page, the cover page, again, this is an appraisal for 40 Wall Street as of November 1, 2012 prepared for Capital One Bank and at the bottom, it is prepared by Cushman & Wakefield, Inc., correct?

Yes.

MR. FIELDS: If we could go to page three.

Q Is this an appraisal that you conducted for 40 Wall Street in or about November of 2012?

Repeat that. I couldn't hear you.

Q Is this an appraisal that you did for 40 Wall Street in or about November of 2012?
Yes. The date of value is November 1, 2012, submitted October 25, 2012.
MR. FIELDS: Your Honor, I move to admit Plaintiff's 1435 in evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1435.)
MR. FIELDS: ll right. If we could put Plaintiff's Exhibit 1435 and Plaintiff's 121 side by side.
Q We are looking at the cover pages of both of these appraisals and they are both dated November 1, 2012, correct?
Yes.
Q They're both for the same property?
Yes.
Q nd prepared for the same client, Capital One Bank?
Yes.
Q Finally they, are both prepared by Cushman & Wakefield?
Correct.
Q If we can go to page three on both of the documents and again, this is a transmittal letter for both of these appraisals, correct?
Yes.
Q nd it is dated October 25, 2012?

Yes.
Q nd again, it's directed to Capital One Bank?
Yes.
Q nd this letter is coming from you to the client, Capital One Bank, correct?
Yes.
Q t the bottom of Plaintiff's 121, the market value as is as of November 1, 2012 is $200 million, correct?
Yes.
Q You testified a minute ago that that was the final appraisal that you transmitted to Capital One Bank, correct?
Yes. Those have our signatures on it, yes.
Q nd then if we look at Plaintiff's 1435, the market value as is as of November 1, 2012 is $220 million, correct?
Yes.
Q Those are two different numbers, the same appraisal of the same property as of the same date, correct?
Yes.
Q Why is that?
There could have been an adjustment that was made and we're always working on copies. So I'm not sure which one was submitted to the bank as a final.
Q Is it possible both of these were submitted to the bank as a final?
I don't know.

Q Is it possible that the bank asked you to revise your appraised value after you had sent them the initial copy?
It's possible. They have a review department internally that reviews the appraisal and we typically get questions or comments back.
Q So it is possible that the bank was unhappy with the value and asked you for a new one, correct?
I don't know. It could have been some assumptions that were used or something in the appraisal that was caught during the review. I don't know.
Q Well, do you know if you sent the bank the one with $220 million first or the one with $200 million first?
I don't know.
Q So you potentially sent the $220 million version first and they wanted a lower number for a liquidation value, correct?
It doesn't say anything about liquidation value here.
Q Well, is it possible that the bank was looking for a lower figure to know what they could liquidate the property in a worse case scenario?
If we were to provide a liquidation value, we would identify that in the appraisal as a liquidation value.
Q But suffice it to say as you sit here today, you're not sure which of these two is the final version?
No, I don't know.
Q ll right. Mr. Larson, we're going to move through

this appraisal a little quicker than we did like the first one because we've already discussed some of these topics, but I do want to highlight a couple of things for you.
MR. FIELDS: So in Plaintiff's 1435, if we can go just full screen to 1435.
Q s we've discussed, page three, you arrived at a November 1, 2012 as is value of $220 million?
Yes.
Q nd on the next page, page four, your perspective market value for the property as of November 1, 2015 is $260 million?
Yes.
MR. FIELDS: nd just for purposes of the record, in Plaintiff's 121, if we can put that side by side for a second.
Q On page five, your perspective market value in Plaintiff's 121 is $20 million less at $240 million?
Yes. In terms of which one is the final, you'd have to ask the bank.
Q Sir, you're the appraiser that signed this property. ren't you supposed to know what the final appraised value is?
This report is from 2012. Can't -- I can't recall. I would have to --
Q Just so the record is clear -- I'm sorry.
I said you'd have to ask the bank. I can't recall.

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Q But just so the record is clear, you are an appraiser that signed an appraisal and there's two competing appraisals for the same property as of the same dates and you cannot testify here under oath which is the correct one?
Capital One Bank requirement is to provide final appraisals. It could be subject to a review.
THE COURT: Let me just say are you asking for the correct one, what you just said, or the final, official one which is what I think you probably really mean?
MR. FIELDS: Your Honor, either of the two.
THE COURT: Well, let's distinguish between them.
Q s you sit here today, Mr. Larson, can you testify if Plaintiff's 121 or Plaintiff's 1435 is the correct or final appraisal for this year?
No, not sitting here I cannot.
Q Is it possible that you made an error in finalizing the appraisal for this year for this property?
I don't know. It -- we see value changes before the final frequently and then this is why we have so many reviewers going through these appraisals, to make sure that the very final is accurate, so I wouldn't know.
Q Wouldn't know if you made an error where you had two competing appraisals for the same date; is that your testimony?
I don't remember the six.
Q But is it possible you made an error?

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It's possible.
Q If we could go to page ten in the bottom half of the page, there's direct capitalization in bold letters. Do you recall that in 2011 you used the capitalization rate of seven percent for this property?
Which -- which -- this is -- what appraisal is this?
Q This is 2012. My question was do you recall that in the one that we looked at half-hour or so ago from 2011, that the capitalization rate was seven percent?
Which appraisal from 2012? The first one or the second one?
Q Well --
Or the -- is --
Q I suppose that's a question only you can answer respectfully, Mr. Larson. Do you know if it is the first or the second?
Not sitting here, I don't.
Q Okay. My question was as of 2011, at the appraisal we looked at earlier, the capitalization rate was seven percent, correct?
Yes, I remember that.
MR. FIELDS: If we can pull up side by side Plaintiff's 1435 and Plaintiff's 121. 1435, we can keep where it is. Plaintiff's 121, let's look at page 11.
Q Can you see both the competing appraisals on the screen

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here?
Yes.
Q nd in Plaintiff's 121, which is on the right, you see that there's a capitalization rate of seven percent, correct?
Yes.
Q nd Plaintiff's 1435, there's also a capitalization rate of seven percent, right?
Yes.
Q So you kept the capitalization rate the same from 2011 to 2012, correct?
Yes.
Q Plaintiff's 1435, page 20. We looked at this earlier, Mr. Larson, in 2011, but this is standard language that was used in the prior appraisal relating to intended use and intended user, correct?
Yes.
Q You have any reason to believe that this has changed from the one we looked at earlier in 2011 to this one?
No, it looks pretty much the same.
Q If we could move to page 39 of Plaintiff's 1435, you see at the first line, it says, "Overall asking rents have fallen 12 percent per square foot to end the quarter at $40.06 per square-foot? You see that?
Yes.
Q nd do you recall from our discussion in 2011 that the

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asking rent then was $39.10 per square-foot?
I can't remember the exact number.
Q Do you have reason to doubt the number or would you like me to confirm it with you? I'm happy to.
MR. FIELDS: If we could pull up Plaintiff's 140, page 38.
Q So in 2011, overall asking rents have fallen $0.28 per square-foot, ten and a quarter at $39.10 per square-foot?
Yes, I see it.
Q So the asking rents have come up a little bit, correct?
Yes.
Q pproximately a dollar or so?
Yes.
Q But the next sentence in Plaintiff's 1435, we can keep it side by side, says, "Overall asking rents should remain over $40 per square-foot this year with strong demand. It was feared that after the financial crisis, the downtown market would languish for several years as the financial tenants with the largest footprint in the area suffered during the fallout. s mentioned earlier, media and technology tenants have been the biggest dealmakers recently and have been the biggest drivers of midtown south's improvement. s Midtown South's vacancy declines, tenants have expanded their search to midtown and downtown. The overflow from midtown south should add healthy demand."

Is this your -- withdrawn. re you indicating here that there's positive sentiment in the market for the downtown area at this time?

Yes, looks like it's starting to get better.

Q So there's a potential trend that's showing an upward trend; is that fair?

Yes. In comparison with the prior appraisal or rent of 39.10 a foot versus 40.06. It's very moderate between that period of time.

Q t the bottom of page 39 on 1435, under the heading, "leasing activity," you write that, "Leasing activity is down from a year ago. Downtown had its best year in a decade in 2011 in terms of leasing activity, so it is hard to compare."

Would it be fair to say that 2011 was a record year for leases in downtown New York City?

It says downtown as best year in a decade since 2011.

Q nd you continue. "However, there have been many renewals this year and these do not count towards statistics. Morgan Stanley alone signed a 1.2 million square-foot renewal in the second quarter. It is this sort of activity that has kept the market healthy this year. s tenants look to downtown with midtown south filling up, demand for space will grow. Downtown will not match last year's totals, but the market will continue to improve in 2012 because of greater demand."

gain, just to be clear, this is indicating that there

is a positive sentiment in the market at this time, correct?

Yes.

Q How does a positive market sentiment affect your analysis?

We would view the trends in the market and we would look at changes in market rents, changes in assumptions. We look at all of the assumptions between these two appraisals.

Q Positive market sentiment could affect a capitalization rate, correct?

Yes, it could.

Q nd we've established that you kept the same capitalization rate from 2011 to 2012, correct?

Yes.

Q similarly situated, reasonable appraiser with your experience could have arrived at a different capitalization rate, correct?

Yes.

Q In fact, it could have -- he or she could have arrived at a lower capitalization rate, correct?

It's possible.

Q I mean, a similarly situated appraiser could have put more stock into the positive sentiment in the market at this time to rely upon a lower capitalization rate?

It's possible. That's possible an appraiser could be higher or lower.

Q nd if an appraisal is -- withdrawn.

If a capitalization rate is lower than seven percent, that means the property value would go up, correct?

Yes, unless there's additional capital or some other change in the property that would offset that.

Q Keeping everything equal, eliminating those variables, if all of that is the same, all the information is the same except a different capitalization rate, namely a lower one, that would result in a higher property value?

Yes.

MR. FIELDS: Page 107 on the 1435, if we could go to page 107 on the 1435 and if we could put side by side Plaintiff's 1573, page 104.

Q So on the right, Mr. Larson, we have 1573 which is the 2011 appraisal and on the left, we have 1435 which is one of the 2012 appraisals. Does that seem accurate?

You are telling me 2011 -- just repeat that, please.

Q So 2011 is on the right and one of the 2012s is on the left.

Okay.

Q Okay. In 2011, the occupancy status was 72.88 percent, correct?

Yes.

Q nd in 2012, in 1435, the occupancy status was 81.65 percent, correct?

Yes.

Q So the occupancy status in one year has gone up almost ten percent, correct?

Yes. It looks like the addition of four new office tenants.

Q I'm sorry. I didn't hear that last part.

It looks like the addition of four new office tenants, 50 to 54.

Q Right. So there's an additional four office tenants in the 2012 appraisal. The occupancy rate also affects your analysis in arriving at an appraised value, correct?

Yes.

Q nd the occupancy rate can affect both the net operating income for a property, correct?

Yes.

Q nd it also could affect the capitalization rate for a property, correct?

Can you repeat that?

Q The occupancy status of a property -- withdrawn.

The capitalization rate applied to an appraisal could go up or down depending on the occupancy -- occupancy status of that property, correct?

That could be one of the variables or it could be market conditions, but we would determine that based on research.

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Q But would it be fair to say that it would be more likely for a property that's 81 percent leased than 72 percent leased to have a lower capitalization rate because it's more occupied?
It's possible. We would have to examine that during the appraisal.
Q But an appraiser can come to that conclusion, correct?
It's possible.
Q Can the occupancy rate also affect the discount rate?
discount rate is based on risk, so that's possible, too.
Q nd a discount rate you would presume is lower where a building is more occupied than less occupied, correct?
Yes, but there's other factors and risks that you have to look at, all of the information on the property, and how it's operating. So there are a variety of things that we look at other than just occupancy.
Q greed. But Mr. Larson, there are a whole host of subjectivities that an appraiser looks at when arriving at his or her appraised value, right?
Yes.
Q nd these that we are discussing now, cap rate discount rate and the like, are just a number of these subjectivities that you're relying on as an appraiser, right?
These are all components or part of a valuation or

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appraisal.
(Continued on the next page.)

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Q But different appraisers exercising their judgment can arrive at different conclusions based on these same subjectivities; correct?
Just repeat that one more time.
Q Different appraisers, similarly situated appraisers relying on their independent judgment could arrive at different conclusions based on the same data or subjectivities available to them?
Yes.
MR. FIELDS: ll right. Let's move to 1435, page 111. nd put next to it, please, 1573, page 108.
Q ll right. So, again, on the left it's 2012; on the right, 2011. Under the heading "lease structure of the subject property," let's start with 2011. "The property is leased to nine major office tenants" in the first sentence; correct?
Yes.
Q nd if we could then back out and look at the third paragraph beginning with the nine major office tenants.
nd the nine major office tenants represent over 40 percent of the property's total rentable area; right?
Yes.
Q nd if we look now at the 2012 appraisal, the number of office tenants has gone up to 11 which now represents 50 percent of the property's total rentable area; correct?
Yes.

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Q So there's been two additional tenants in the last -- major tenants in the last year and the percentage has gone up from 40 to 50 percent of the total rentable area?
Correct.
Q gain, this is a factor a subjectivity that as an appraiser you look at to determine your appraisal value; correct?
Yes, this is one of the variables we would look at.
MR. FIELDS: If we could go to 127 on 1435 and put that next to 125 of 1573.
Q Okay. Mr. Larson, so here the heading is "Office Market Rentable Growth Rate" and you've identified again the rent growth at three percent in both years; correct?
Yes.
Q On the right in 2011, the growth rate begins in 2012 and we agreed earlier that's at the beginning of the 2013 year; right?
Yes.
Q nd then if we look at the left -- excuse me -- the rent growth rate is three percent and that begins in 2012?
Yes, that's what it says.
Q nd both instances that would be beginning in the 2013 calendar year; right?
No. It says we assumed growth in 2012 on both, both appraisals. So -- so the growth rate would begin in 2012 for

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both appraisals.
Q But does it begin at the end of 2012 or the beginning of 2013?
With the growth rate assumptions applied as the effective date of value, whatever they are in, whatever appraisal we do.
Q So as -- but my question is as you look at these two does it begin in the beginning of 2013 or the beginning of 2012?
I know what it says. It says three percent beginning in 2012.
Q Okay. So just to be clear, in 2012, the occupancy for major tenants has gone from 40 to 50 percent and there's been two additional major tenants. The occupancy as a whole has gone up approximately ten percent to about 81 percent, but you're still relying on the same growth rate; correct?
Yes, it looks like it.
Q nd you would agree with me the similarly situated appraiser could have applied a different rent growth rate; correct?
Yes, another appraiser can come up with their own assumptions.
MR. FIELDS: Okay. If we could move to Plaintiff's 1435, page 163.
Q ll right. On Plaintiff's 1435 --
MR. FIELDS: We can just go full screen to 1435.

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Thank you.
Q We've established, Mr. Larson, that you applied a seven percent cap rate in this appraisal; right?
Yes.
Q nd you see at the top that it has "downtown Manhattan office building sales terminal capitalization rate summary." re these capitalization rates that you derived from these properties based on recent sales?
Yes.
Q So, for instance, the 180 Water Street was a six percent capitalization rate; right?
Yes. Terminal capitalization rate to clarify.
Q nd the -- so -- withdrawn.
The average capitalization rate based on these comparables that you identify was 5.81 percent; correct?
Yes.
Q nd the high capitalization rate was six percent? The highest one in the list?
Yes.
Q nd you applied a seven percent capitalization rate; correct?
Like I said, these are terminal capitalization rates. So in the future on a discounted cash flow what you showed me before -- can you correct me and show me what you showed me before?

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Q I'm sorry?
Can you show me what the seven percent represents?
Q Sure.
MR. FIELDS: If we could go to Plaintiff's 1435, page ten?
THE COURT: Mr. Fields, any chance of finishing with this witness today? You have 15 minutes basically. I'll give them one minute for redirect.
MR. FIELDS: Unlikely, Your Honor.
MR. KISE: Mr. Roberts, and I have a question or two, Your Honor.
THE COURT: ll right. I hope you move things along apace.
Q So Plaintiff's 1435, page ten, this is a direct capitalization rate that you applied; correct?
Yes, this is a going in capitalization rate.
Q Okay. nd if we back out this, zoom in and if we go a little bit higher to the middle of the page where it says "terminal capitalization rate six percent;" correct?
Yes.
Q So then if we go back to page 163, the terminal capitalization rate that you applied was the highest, six percent from that list?
Yes, it was higher than the average, correct --
THE COURT: Highest is always going to be higher

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than the average, right, or should I go back to high school?
MR. FIELDS: Well, Your Honor, that's why I went to law school because I'm very bad with math.
Q It's higher than the average and higher than the highest value there; correct -- sorry.
It equals the highest value and it's higher than the average; right?
So we selected the six percent terminally future terminalization cap rate. So these are the statistics from the sales. So they show your highlighted six percent high and average of 5.81 percent.
Q nd the value you chose is higher than the average; correct, the terminal capitalization rate that you chose for this property in this appraisal was higher than the average of 5.81 percent?
Yes, we selected six percent.
MR. FIELDS: If we could go to Plaintiff's 1435, page 172?
Q ll right. Mr. Larson, is this now a direct capitalization method being employed based on comparables?
Yes, this is the direct capitalization method stabilized as of November 1, 2015 and we cite downtown overall capitalization rates.
Q The overall capitalization rates that you cite here are from between 3.62 to 6.74 percent; correct?

D. Larson - Plaintiff - cross (Fields) Page 1666

Yes.
Q nd the capitalization rate that you use was seven percent; correct?
Yes.
Q So the capitalization rate that you used was above the average and above the highest of the comparables that you selected; correct?
Yes.
Q nd finally if we could go to page 176 fourth bullet point. I won't read it again, but do you have any reason to believe that this language is any different than the language we looked at in the 2011 appraisal about limitations about the appraisal's use?
No, it looks similar.
Q Therefore, the same restrictions on the use of the 2012 appraisal as the ones that apply would be the same as the ones that apply to the 2011 appraisal; correct?
Yes.
MR. FIELDS: ll right. Let's move to Plaintiff's 118, which has been admitted in evidence. It's the 2015 appraisal of 40 Wall Street. Page two is where the appraisal --
Your Honor, may I have a moment? Judge, may I have a moment, please?
(Whereupon, there is a pause in the proceedings.)

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Q ll right. Mr. Larson, on the screen is Plaintiff's 118, page 8. This is the 2015 appraisal for 40 Wall Street that you did; correct?
Yes, this is the appraisal prepared for Ladder Capital prepared by Cushman & Wakefield.
Q nd if we could go to the page and the Bates 2006 -- well, I have a different version so let's go to the transmittal page, please.
gain, this is the transmittal letter from you to Ladder Capital Finance; correct?
Yes.
Q Dated June 25, 2015?
Yes.
Q nd in the second paragraph the -- we see the same or very similar language regarding the use of this appraisal being limited to Ladder Capital Finance; correct?
Yes.
MR. FIELDS: ll right. If we could go to the next page.
Q gain, this was signed by you, Mr. Larson, and similarly signed by Mr. Papagianopoulos and Mr. Nardella?
Yes.
Q Let's go to page Roman Numeral IV, top Roman Numeral IV. In the middle here, Mr. Larson, we see that you arrived at an as is value of $540 million?

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Yes.
Q nd in comparison to the 2012 appraisal or appraisals, do you recall that the values were approximately 200 million or 220 million, depending on which appraisal was the final one?
Yes.
Q nd so would it be fair to say that from 2012 to 2015 the appraised value of this property has gone up considerably?
Yes.
MR. FIELDS: Page Roman Numeral VI top.
Q Okay. Mr. Larson, so in the middle of the page the terminal capitalization rate that you use now is five and a quarter; correct?
Yes.
Q nd do you recall within the 2012 that you used a six percent terminal capitalization rate?
That's correct.
Q nd if we can back that out and at the bottom of the page under the "direct capitalization" heading, the capitalization rate that you used here was 4.25 percent; right?
Yes.
Q nd as I recall in 2012, you used a seven percent direct capitalization rate; right?
Right.
Q So it's considerably lower?
Yes.

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Q The net operating income under the direct cap method is approximately $23,203,000; correct?
Yes, with adjustments for free rent.
Q I'm sorry?
With adjustments for free rent.
Q Right. nd so the indicated value is approximately $538 million that you rounded to $540 million; right?
Yes.
MR. FIELDS: ll right. If we could go to page 87 at the top under the heading "Occupancy Status."
Q This is still 2015. You write that the property 40 Wall Street is currently 95.02 percent leased to 72 office tenants and four retail tenants.
Do you recall from the 2012 appraisal that the occupancy rate was approximately 82 percent, give or take?
Yes, it increased dramatically.
Q I'm sorry?
It increased dramatically.
Q re you familiar with the term "rent stabilization?"
That's a residential term.
Q Can -- is it -- can a commercial property be stabilized? Have you ever heard that term used?
commercial -- no. You'd have to clarify that with me.
Q Is it not true that a property that is occupied over

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approximately 93 or 92 percent is considered a stabilized property?
Stabilize -- the definition of stabilization is based on comparables, you know, how it's perceived in the market. There could be -- it could be financially stabilized, it could be, you know, free rent. You know, there is a lot of things to consider when looking -- when calling something stabilized.
Q Was 40 Wall Street stabilized in this year at a 95.02 percent occupancy rate?
You would have to compare it to occupancy levels of other buildings, but it would probably be close to stabilized or at stabilization. I'm not sure without reviewing the report.
Q But in 2012 it had not yet reached stabilization. Is that fair?
That would be fair to say.
THE COURT: Five-minute warning.
MR. FIELDS: ll right. The top of page 91, please.
Q Here, we're talking about the lease structure of the subject property and you note that the property is leased to 24 major office tenants; correct?
Yes.
THE COURT: I just want to point out that New Yorkers are very familiar with the term "rent stabilization" and it only applies I'm 99 percent sure to residential

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properties. In Florida, there may be a different system, different law, different terminology, but I will say, Mr. Fields, you have to be really careful when you say rent stabilization: In New York or they'll jump all over you. I understand that you are using stabilization in a different context, a different way.
Q Okay. Mr. Larson, so there is 24 major office tenants as of 2015 and, as you'll recall, in 2012, there were 11 major office tenants; correct? Does that sound right?
Sounds approximately right.
Q It went from nine to 11 and now it's at 24; right?
Yes.
MR. FIELDS: nd if we can go to the top of page 96, last paragraph at the bottom.
Q You write "downtown average asking rents continue to increase as direct asking rents rose to $58.71 per square foot, up 17 percent from one year ago. Downtown overall asking rents reached $57.58 per square foot, the highest quarterly level ever recorded in this market."
So as of the time of this appraisal, Mr. Larson, the asking rent had reached $57.58 per square foot; correct?
Yes, that's what it says.
Q It had gone up from the prior appraisal that you had done in 2012; right?
From three years ago, yes.

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Q So in 2012, does it -- do you recall that the market asking rent was approximately $40.06? Does that sound right?
It sounds approximately right.
Q So if it was approximately $40.06, it's now $57.58, you would agree with me that that's approximately a 44 percent increase in three years?
Without doing the math, that sounds about right. That's a pretty big increase.
MR. FIELDS: Your Honor, would you like me to --
THE COURT: Break? We're sort of officially over, but we're going to stay on the record to just do some scheduling matters. Will you be continuing your cross tomorrow?
MR. FIELDS: Yes, Your Honor, and it should be very brief. Just request an admonishment to the witness not to discuss his testimony.
THE COURT: I hereby admonish the witness. Mr. Larson, do not discuss this case with anybody until your testimony is over tomorrow.
(Whereupon, the witness is excused from the witness stand.)
MS. GREENFIELD: Just really quickly. I know we're going to finish with Mr. Larson tomorrow, then I assume there will be some redirect?
MR. W LL CE: I think minimal.

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MS. GREENFIELD: nd who is after Mr. Larson?
MR. KISE: We'll have some cross tomorrow of Mr. Larson as well.
MR. W LL CE: Then it will be Mr. Mc rdle -- no. I'm sorry. ctually, what we will do is -- I apologize. The witness, Jack Weisselberg, has some availability, so we would start with him as the next witness after Mr. Larson and then we would move on to Mr. Mc rdle followed by Mr. Flores.
MS. GREENFIELD: Do you think you are going to get to Mr. Mc rdle tomorrow or is it going to be a full day with Mr. Weisselberg?
MR. W LL CE: I don't think we will take a full day on direct.
MS. GREENFIELD: re you going to be crossing Mr. Weisselberg?
MR. KISE: I don't think so, but I don't know yet.
MS. GREENFIELD: So potentially three witnesses tomorrow?
MR. W LL CE: Correct. nd I would just add that potentially if -- Mr. Weisselberg no longer lives in the jurisdiction, so might have to return. We can discuss it at a sidebar but we might need to -- if you were to carry over for some reason, we might need to interrupt his testimony. But our expectation would be that it would be the

continuation of Mr. Larson, Mr. Weisselberg and then Mr. Mc rdle tomorrow.
THE COURT: I suggest we call him Jack so there is no confusion. Somebody out there in the gallery is going to oh, Mr. Weisselberg. So we're talking about Jack.
MR. W LL CE: Jack W. would be our next witness tomorrow.
MR. KISE: nd Friday is still Robertson and Orowitz?
MR. W LL CE: Correct.
MR. KISE: One other thing. Do we have any further update on Mr. Cohen's status at all?
THE COURT: No. We're still operating under the assumption that Monday at the earliest and we hope Monday.
MR. KISE: Did he ever provide --
THE COURT: We did get a fairly extensive doctor's note.
MS. H BB : Your Honor, I guess now is a good time since it came up anyway. I do have an argument on the Carro case on Monday in the ppellate Division, just so you know. So I would prefer if Michael Cohen was not on Monday, if possible.
THE COURT: Can we make him Tuesday or --
MR. W LL CE: Let us go back and work through our Rolodex and we'll let everyone know if we can accommodate

that.
THE COURT: I'd appreciate it, of course.
MR. KISE: nd one other thing, Your Honor. gain, we've worked these things out, but I was informed this morning that President Trump has conflicts, pretty significant ones, right before November 7th is Election Day so I know we're off then, but the 1st, 2nd, 3rd, and 8th, I know we were talking about -- and that may work out. It still may work out fine, there is no problem but I just want to note that that he may have significant conflicts the 1st, 2nd, 3rd and 8th.
MR. W LL CE: I want to make sure I have those dates correct. It was November.
MR. KISE: 1st, 2nd, 3rd, and 8th. We're off the 7th, Election Day and not the 6th.
MS. GREENFIELD: We're also off the 10th. We're also off the 10th.
MR. KISE: I know we're off the 10th. Mr. Roberts would like to have the whole week off personally. That's a whole other issue.
THE COURT: I'm sure he's not the only one.
MR. KISE: Well, okay. Ten o'clock tomorrow.
MR. W LL CE: Thank you, Your Honor.
Proceedings are adjourned to Wednesday, October 18th, 2023 at 10:00 a.m.

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al

DOUGL S L RSON, J CK WEISSELBERG
October 18, 2023

NICOLE C. ROBINSON

Original File 101823TRUMP.txt
Min-U-Script® with Word Index

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022
DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X
Supreme Courthouse
60 Centre Street
New York, New York
October 18, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

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D. L RSON - CROSS (MR. FIELDS) Page 1678

Senior Court Reporters
THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.
THE COURT: Okay. Ready or not, we're going to let in the photographers and the videographer.
(Whereupon, there was a pause in the proceedings.)
THE COURT: One quick housekeeping matter. Yesterday, I received a letter from the ttorney General about an evidentiary question and will the defendants be submitting something? nd if so, can we have that by tomorrow at noon?
MR. KISE: Yes, Your Honor. Can we say tomorrow evening just because we're on trial tomorrow?
THE COURT: Yes, for sure.
MR. KISE: Thank you.
THE COURT: nd O G, do you have another housekeeping matter of some sort?
MS. F HERTY: Good morning. Yes, Your Honor. Just to clean up the record a bit, yesterday my colleague Mr. Haren introduced an Exhibit PX 618. It was during the testimony of Donna Kidder. Ms. Kidder did testify that she recognized the document. She identified it as an e-mail 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. H BB : I spoke with Colleen about this. Obviously, with our standing objection on statute of limitations, we have no problem. Thank you.
MS. F HERTY: Thank you.
THE COURT: It is in with the statute of limitations objection noted.
MS. F HERTY: 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.
D O U G L S L R S O N, 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.
nd Mr. Fields, would you like to continue the cross-examination?
MR. FIELDS: Yes, Your Honor. Thank you.
CROSS-EX MIN TION

D. L RSON - CROSS (MR. FIELDS) Page 1679

Q Good morning, Mr. Larson.
Hi.
Q You recall yesterday we were discussing competing appraisals from 2012 for 40 Wall Street, correct?
Yes.
MR. FIELDS: Okay. I'm going to ask that we hand up to the witness what has not been admitted, but has been marked as Plaintiff's 3208.
Q Mr. Larson, do you generally recall that your testimony was you are unsure which of the two appraisals was the final appraisal?
Yes.
Q Okay. I'd like, if you could, please look at page two of 3208.
First of all, do you recognize this as an e-mail that you sent to Mr. Carias?
Yes.
Q nd this is dated November 13, 2012?
Q Yes.
Q The subject line is 40 Wall Street?
Correct.
Q Okay. nd you say to Mr. Carias, " ttached, please find the final appraisal". nd then if we could go back to page one, Mr. Carias responds the next day at one o'clock in the afternoon, "Please call me when you have a moment to discuss this report." Do you recall this e-mail with Mr. Carias?
I'm seeing it now, yes; but it is an e-mail from Riick Carias to myself.
Q s you sit here today, do you recall having a phone conversation with him to discuss the report?
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?
Yes.
Q If we could go to page six of the document, gain, Mr. Larson, the transmittal letter is October 25, 2012?
Yes.
Q nd the as is value as of November 1, 2012 is $220 million and on the next page, the as is market -- I'm sorry. I'm sorry. The appraisal as of November 1, 2015 was $260 million.
THE COURT: I think you added a word to this subject line that says, "Please find the revised appraisal". It doesn't say "final" where you were directing his answer.
Q Mr. Larson, was this the final appraisal?
Could I see the e-mail again?
Q It's right in front of you, sir.
Yes. It says, "Please find the revised appraisal."

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Street. re you aware of any other appraisals other than the two we discussed here in court?
No, I'm not.
Q nd 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?
Yes, that's what it says on the appraisal.
Q So in 24 hours, your appraised value went up $20 million, correct as of November 1st?
Yes, this is different from the -- a prior appraisal that was submitted.
Q nd in 24 hours, the appraised value as of November 1, 2012 went up $20 million, correct?
I believe the number -- the value previously was 200 million.
Q So that would be a $20 million increase in 24 hours based on this e-mail communication we just looked at correct.
That would be called a $20 million difference, yes.
THE COURT: Hold on.
Mr. Kise.
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.
MR. L DOV: Objection. To be clear, yesterday we had a lot of questions that did not necessarily get a yes-or-no answer.
THE COURT: Let's not go back to yesterday.
Mr. Kise, granted.
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.
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?
Yes.
Q nd 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?
Could you repeat that again?
Q Sure. Do you recall yesterday that we discussed that the prior appraisal for $200 million, the transmittal date was also October 25, 2012?
Yes.

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to Mr. Carias on or about November 14, 2017 based on this e-mail in Plaintiff's 3208?
Yes.
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?
That is likely a typo.
Q Or you failed to change the transmittal date; fair?
The date that the appraisal is sent out, that should be the date of that report. That would be a typo.
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?
Discussions are typically with the appraisal representatives at the banks to review assumptions or to make correction.
Q nd it is standard practice for you to have those discussions with the client and to ultimately revise the value, if needed, correct?
Yes.
Q So the clients have input in the appraisal process, correct?
Yes. The reviewer does at the bank.
Q So you would agree, then, that it is a collaborative process between you as the appraiser and the client?
It's our value, but we allow opportunities to review our work.
Q nd to collaborate on your work, correct?
I'm not sure I would call it collaboration because it is our value.
Q But the client can have input on what your ultimate value is, correct?
They review our appraisals.
Q My question is can they have input as to what the ultimate value is in your appraisal?
They can have their own opinions, yes.
Q But my question is can they have input as to what the ultimate value in the appraisal is?
Yes.
Q nd there's nothing sinister about that, correct?
No.
Q ll 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

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few final questions about that.
MR. FIELDS: If we could pull up Plaintiff's 118, page 136.
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?
Yes.
Q nd in '15, you're using the same growth rate, three percent, yes?
Yes.
MR. FIELDS: Now, if we could pull up page 171.
Q t 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?
Yes.
Q This is the net operating income that you used for the direct capitalization method in this appraisal for 2015, correct?
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.
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?
Yes.
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?
Could you repeat what I'm looking at --
Q Sure.
-- so I can follow?
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?
Yes.
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?
Yes. The 18 million is also based on the cash flow into the future based on assumptions as of the date of value.
Q I just want to make sure we are in agreement that this is a projected figure into the future, correct?
Yes.
Q Okay. nd 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

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capitalization method?
Yes.
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?
Yes. Can -- what is the date of the 2015 NOI that has been adjusted for free rent, so it is clear?
Q Do you have Plaintiff's 118 in front of you?
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.
Q Correct.
Okay.
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?
Yes.
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?
Yes. s 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.
Q Your testimony is that in 2015, the 95 percent occupancy was not stabilized?
There was free rent associated with the leasing that had been done.
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?
You need to apply a market cap rate to a stabilized net operating income.
Q But be that as it may, the difference between these two figures is about 4.8 correct?
Yes.
Q nd in 2015, you used a four and a quarter capitalization rate, correct?
Yes.
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?
I can't do those numbers in my head.
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

THE COURT: Seeing no objections, I will take judicial notice of that mathematics, yes.
Q Mr. Larson, would it be fair to say, then, that you undervalued 40 Wall Street to the tune of approximately 114 and-a-half million dollars based on the conservative figures that you used in your 2012 appraisal?
No, we did not.
Q You did not what?
We did not undervalue the -- this property based on what -- based on the assumptions that were used here.
Q Okay, but your projections were wrong, right?
We apply those -- the net operating income of $18,300,000 is a projected number and the 23,000,200 was an as is number as of the current date. So the best we can do is use the projections that we knew as of 2012.
Q But my question is, your projection was off by about $4.8 million, correct?
Yes.
Q nd when you convert that into an actual value for the property, you short-changed, according to the actual data in 2015, the property value by approximately $114.5 million, correct?
No. We based, again, our assumptions on what we knew at the time and the projections that we knew. So if the 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?
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?
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?
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. L DOV: Objection, Your Honor, I know you don't like this, but this question has been asked and answered twice already.
THE COURT: sked and answered.
MR. L DOV: Twice already.
THE COURT: Twice already.
MR. KISE: It hasn't been answered. First of all, it hasn't been asked.

wasn't asked.
THE COURT: I will give him a little leeway. I understand.
Q Sir, my question is very simple. If you undervalued 40 Wall Street by approximately $114 million projected for 2015, and the value you used in 2012 projected for 2015 was $260 million, then undervalued 40 Wall Street and the appropriate value should have been $374 million give or take; isn't that true?
If that was the net operating income, that would have been the value at that time.
Q Thank you.
Then the last question I'd like to ask you is on page 179 of the 2015 which is Plaintiff's 118.
MR. FIELDS: We can pull 1435 off. So Plaintiff's 118, page 179, please.
Q Mr. Larson, I asked you questions yesterday about the fourth bullet point relating to the use of the report. Do you recall those questions?
Yes.
Q Do you have any reason to believe that the language in this 2015 appraisal is any different than the 2012 and 2011 appraisals that we've discussed with regard to the limitations of its use?
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?
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 ugust 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?
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?
Yes.
Q nd 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?
I don't recall that exactly, no.
MR. W LL CE: Objection, Your Honor, at this point. Can the defendant please stop commenting during the witness'

THE COURT: I don't -- I wouldn't stop them from talking to each other softly, so that no one else can hear. What do you think has been happening?
MR. W LL CE: I believe it's exultations that are audible over on this side of the courtroom as well as the witness is answering questions.
THE COURT: Okay. I'm asking everyone to be quiet while the witness is testifying, particularly if it's meant to influence the testimony.
Q So Mr. Larson, Mr. McConney continues, "Would you be able to send me a current report similar to the one attached for midtown class buildings and also one for downtown class buildings (like 40 Wall Street). Thanks in advance, Jeff."
You understood this to be Mr. McConney requesting market information from you, correct?
Yes.
Q Specifically relating to 40 Wall Street, correct?
That's what it appears to be, yes.
Q nd this e-mail in 2013 is after you've done an appraisal in 2011, an appraisal in 2012 for 40 Wall Street, correct?
Yes.
Q If we can go to the response e-mail above, approximately 7:53, you respond, " ttached, please find the sales. I hope all is well. Thanks, Doug." Correct?
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?
No. This is a request by many clients to provide market information.
Q nd it is standard practice for many climates to ask you to provide them market information, correct?
Yes.
Q nd there's nothing sinister about that, is there?
No.
Q You sent this information to Mr. McConney because you knew that he was valuing the Trump properties, didn't you?
I don't recall that.
Q nd 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?
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?
Yes.

and put on the screen Plaintiff's 109. It has not yet been admitted in evidence.
Q Mr. Larson, does this appear to be another e-mail chain between you and Mr. McConney and others?
Yes.
Q I move to admit Plaintiff's 109.
THE COURT: Granted. It's in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 109.)
(Continued on the next page.)

Q t the bottom of the page on September 15, 2014 you ask -- withdrawn.
t the bottom of the page, September 15, 2014, Mr. McConney writes to you: "Doug, sorry to bother you. If we have a property with a ground lease that expires in 2079 in one case and 2206 in another, would that effect the cap rate in any way?" That's what he writes to you; correct, Mr. Larson?
Yes.
Q Do you recall receiving this e-mail?
I see it now, yes.
THE COURT: That's not the question.
Yes -- no, I do not recall receiving it.
Q You do not recall receiving the e-mail.
If we go up a little bit more, Mr. McConney writes to you again, the following day, September 16, 2014, "Doug, I hate to be a pest, but the accountants are coming in tomorrow to go over my valuations. ny chance you can answer my question below? Sorry for the last minute question. Thanks, Jeff."
Do you see that?
Yes.
Q You hadn't responded to Mr. McConney so he sent you a follow-up e-mail; correct?
Yes.
Q nd he told you the accountants are coming in tomorrow to go over, quote, "my valuations," meaning Mr. McConney's

valuations; correct?
Yes.
Q So at the time you knew that what Mr. McConney wanted from you was market information so that he could do his valuations; correct, Mr. Larson?
Yes, at the time.
Q Just so the record is clear, you knew you were providing market information to Mr. McConney so that he could use it to compile his valuations; correct?
Yes, at the time.
MR. FIELDS: So if we could pull up yesterday's transcript at page -- side by side, page 1595, lines 15 to 17.
Q Line 15: "Did you work with Mr. McConney in 2013 to determine the cap rate that he used to value this property?
" NSWER: No, I did not."
You lied yesterday, Mr. Larson?
MR. KISE: Your Honor --
No, I did not at the time.
MR. KISE: Before the witness answers that question because there may be more questions of this nature, we may want to take a break. This witness has rights and there is an argument --
MR. W LL CE: Objection, Your Honor.
MR. KISE: Let me finish and then you can object

all you like.
This witness has rights. He has a lawyer in the room. He needs --
MS. F HERTY: This is witness intimidation, Your Honor. He is on the stand --
MR. KISE: We can have a sidebar then.
THE COURT: Let's.
MR. KISE: This witness has rights and he has a right to consult with his counsel before he --
THE COURT: Officer, can you escort the witness out just so we can talk outside of the presence of the witness?
(Whereupon, the witness is excused from the witness stand.)
THE COURT: ll right. Let's all calm down.
nd Mr. Kise, I don't understand. He's on the witness stand. He's answering the questions.
MR. KISE: He's on the witness stand.
THE COURT: nd he can --
MR. KISE: Yesterday, he testified unequivocally "no, I did not." There is more of these. In response to the prosecution's questions he testified that he didn't participate, he didn't work with them and now we've got documents which the government has had that they know they've seen that he's communicated with Mr. McConney about valuations, he's communicated with Mr. McConney about cap

rates. This directly contravenes his testimony from yesterday.
THE COURT: So what.
MR. KISE: I think he needs to be advised as to potential perjury. He has sat on the witness stand in response to their questions without any hesitation and said no, no, no, no, and he has left the distinct impression with this Court and in this room that he had nothing to do with any of this and this was all made up by Mr. McConney in his head. nd so this evidence demonstrates fully that he hasn't -- and I just want this witness to be aware of his Fifth mendment rights not to incriminate himself because he perjured himself yesterday, in my opinion.
So that's what I -- why I hesitated because the minute Mr. Fields asked that question I thought we're getting into dangerous territory and rather than have the witness comprise his rights, I want to bring it to the Court's attention. That's what I think and I think the record supports that.
THE COURT: Indeed.
MR. W LL CE: I'm not even sure this impeaches his testimony, honestly.
MR. KISE: We have a distinct difference of opinion, clearly we do.
MR. W LL CE: This is some kind of performance I'm

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taking it for the press that is now attending to now say that they're getting some perfect -- we asked if he worked with him to prepare the cap rate. The fact that he got an e-mail saying I'm preparing the cap rate doesn't necessarily indicate anything of any event.

Dramatic. Your Honor, this witness has rights, he should go talk to his attorney? If they're impeaching his testimony, they can impeach his testimony if they think he wasn't clear. Yesterday, they can show he wasn't clear. I'm not sure they even want him to go talk to a lawyer --

MR. KISE: I do because unlike the government I take those rights seriously.

MR. W LL CE: Come on. t some point -- you guys are sitting here insulting us.

MR. KISE: If I had pulled what they just did yesterday you know what they would do. They would run around here with their heads, you know, asking for sanctions. I got sanctioned for making legal arguments and so now when they do something that is really borderline, in my opinion, and frankly it is borderline. They have these e-mails, they know this -- they left the courtroom with the distinct impression that this gentlemen had nothing to do with it. nd whether they're concerned about his rights or not, I certainly am because I don't think that he understands exactly what's going on here. Frankly, that's

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what I think.

MR. L DOV: Well, I will just note also that in looking at the e-mail we were just discussing the question that we have up on the screen says, "Did you work with Mr. McConney in 2013 to determine the cap rate that he used to value the property?"

"No, I did not."

The e-mail that apparently impeaches him is from 2014, so the fact that they're creating a bit of a mess of a set of testimony does not mean that the witness is in some kind of peril. It also doesn't mean -- I was reacting -- the government doesn't care about this witness's Fifth mendment rights. This is a performance. If they want to create a record that says you had some e-mails in '14 that may be different from your testimony in '13, as I said, I don't actually think it's impeachment. They're free to do that, but this all -- like what we've just been doing with the witness out of the room, I've never seen anyone do anything like this. I think it is a performance for the press sitting behind us and not a real legal issue.

THE COURT: Last words?

MR. KISE: It is not a performance. There is e-mails from 2013 that we went over. There is e-mails in 2014. What these e-mails demonstrate is there is a continuing course of communication and this isn't some

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attempt by Mr. McConney to simply -- there isn't some attempt by Mr. McConney to simply make up his interactions with this witness and that is the distinct impression that was left by the testimony. I think it was misleading and I don't know that the witness understands. I don't know that the witness understands that these communications exist.

If we want to continue and everyone is satisfied, then fine. It's not a performance, though. I take this very seriously and I'm sorry that Mr. Wallace either thinks that I don't or doesn't himself.

MR. W LL CE: Thank you for the dig at the end.

MR. KISE: You're welcome.

MR. W LL CE: Mr. Larson's attorney is here and at this point having been ripped off the stand and told he has Fifth mendment problems, Nicole Gueron would like to speak to him before he returns to the stand. Given what has now transpired, I'm happy to have her address the Court.

THE COURT: I'll let her address the Court. My feeling about all of this is, first of all, Mr. Kise, it's your own lawyer that's asking questions. My role here is to get witnesses to testify. If he's perjured himself yesterday or perjuring himself today, and I'm not drawing any conclusions at all, I don't care. I just want him to testify. The fewer disruptions to that, the better.

But all right, there is a lawyer here, we like

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lawyers. I'll let the lawyer speak.

Go ahead. What's your position on this? nd you'll identify yourself and your role.

MS. GUERON: Thank you, Your Honor. Nicole Gueron. Clarick Gueron Reisbaum. I'm counsel to Mr. Larson. He has now seen quite a display here. I had been directed not to speak to him between yesterday's testimony and today, which is, of course, the norm. He has now been fundamentally accused of perjury on the stand. I'd like the opportunity to have --

THE COURT: So what. He's accused of perjury on the stand. So what.

MS. GUERON: Well --

THE COURT: If he's perjuring himself, he's perjuring himself.

MS. GUERON: He is not.

THE COURT: Well, then if he's not, you have nothing to worry about.

MS. GUERON: Very well, if that's the Court's instruction.

THE COURT: The Court's instruction is to get the witness back here as quickly as possible and continue the examination now without further interruption.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and

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approaches the witness stand.)
THE COURT: Let's continue with the questioning. re we in the middle of a question and answer?
MR. FIELDS: I think we're in the middle of a question. If the Court would indulge a read back?
THE COURT: Sure. If you can find it.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
MR. L DOV: The question misstates the testimony. He's asking about testimony concerning 2013 and showing him an e-mail that is not related to the testimony in question.
MR. FIELDS: It's cross examination, Your Honor. If the witness wants to answer that, he'll answer that. We'll talk about it.
THE COURT: Witness understand what's this whole year business, '13, '14?
THE WITNESS: Could you repeat that? What -- can you repeat that? I'm sorry.
THE COURT: I'll consider the last question withdrawn. The last question you were on -- I like questions to be short, but please give him the information that you're working with.
Q Mr. Larson, Plaintiff's 3184.
MR. FIELDS: Let's keep this on the screen, please.
Q Plaintiff's 3184 should be in front of you. We just

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discussed it a moment ago. There was an e-mail from 2013 where Mr. McConney says: "It's that time of year again" and your testimony about five minutes ago you knew he was using your market information that you provided him to value his properties; correct?
Yes.
Q nd you testified yesterday under oath subject to the penalty of perjury, did you work with Mister -- strike that.
Under oath, subject to the penalty of perjury, the question was: "Did you work with Mr. McConney in 2013 to determine the cap rate that he used to value this property?"
Your answer, "No, I did not."
You lied yesterday, Mr. Larson?
MR. L DOV: Objection.
Mr. Larson, please.
Objection because you are -- the witness is being accused of lying.
MR. FIELDS: It's a court of law, Your Honor.
MR. L DOV: Your Honor, he's being shown testimony asking whether he worked with Mr. McConney to determine a cap rate. He's allegedly being impeached by an e-mail in which Mr. McConney is asking questions about ground leases and how they might affect property values one way or another. There is -- I mean, there is no inconsistency between his testimony and the e-mails, but there is no basis

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for the question that's being asked right now.
MR. KISE: Your Honor --
THE COURT: Wait. Do we need to take the witness out again?
MR. KISE: No. I was just going to say now we're on to speaking objections. There it is. Would they like to write out the answer for Mr. Larson?
MS. F HERTY: We learned from the best.
MR. KISE: pparently.
THE COURT: Let's avoid speaking objections or anything that could sway the witness. I think I'll just let it be subject to redirect and -- or if the witness doesn't understand the question or whatever he wants to do.
This is what I knew at the time and I don't recall, you know, seeing this before.
Q Seeing what before?
Before today.
Q Seeing what before?
This e-mail about the valuation.
Q Does it have an exhibit sticker of 3184 at the bottom?
Yes.
Q Okay. Just to be clear on this e-mail that you have in front of you, 3184, you testified a minute ago that you understood Mr. McConney was asking for your market information to do his valuations; is that correct?

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That's what it says in the e-mail, that's what it appears at the time that I knew, yes.
Q nd you responded to Mr. McConney with sales. You said, " ttached please find the sales. I hope all is well."
nd you attached several spreadsheets, isn't that correct?
Yes.
Q nd those spreadsheets that you attached have capitalization rates, isn't that true?
Yes.
Q nd you knew that Mr. McConney was using the capitalization rate to figure out a value for the Trump properties, didn't you?
Yes, I must have because he says that in his e-mail about valuations.
Q nd you knew that in 2013; correct?
I must have because he says that there are valuations he's performing.
Q So that's a yes?
THE COURT: Well, let him decide whether it's a yes or a no.
I'm not sure. It's a long time ago.
Q Sir, my question is in 2013 this e-mail in front of you you sent him market information that included cap rates. You knew in 2013 that Mr. McConney was using the information that

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you sent him; namely, the cap rates to value the Trump properties, did you not?
I did.
Q nd you testified yesterday that you did not work with Mr. McConney to determine any cap rate that he used to value this property, didn't you?
This is my -- from my deposition four years ago?
Q No, sir. This was yesterday in this courtroom.
Okay.
THE COURT: Maybe the -- hold on. Maybe the confusion is what does it mean to work with and what does it mean to determine. I don't see an inconsistency here.
MR. FIELDS: Your Honor, respectfully, may the witness answer the question, please?
THE COURT: Sure.
MR. KISE: I'd like to --
MR. FIELDS: nd I will address that, Your Honor. I certainly will. I will.
Well, the question says, "to determine a cap rate he can come up with his own cap rate based on the data that we gave him.
Q nd his cap rate can be the same that you would use or a different one that he would use; correct?
That is correct.
Q Because it's his valuations, not yours?

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That is correct.
Q nd the valuations that Mr. McConney was using in the supporting spreadsheets that you've been shown here today and the ones that you were shown in 2019 at your examination under oath were all Mr. McConney's valuations; correct?
That is correct.
Q nd they were based on information that you were providing to Mr. McConney, isn't that correct?
Yes.
Q nd the information that you provided to Mr. McConney were cap rates and comparables for the market failure, isn't that true?
Yes.
Q nd Mr. McConney is free to choose whatever cap rate he wants from the value -- or from the information that you sent him, isn't that true?
Yes.
Q That doesn't necessarily mean that it's your valuation or Cushman's valuation, does it?
It does not.
MR. FIELDS: If we could move to Plaintiff's 719, the 24 supporting spreadsheet -- 2014 supporting spreadsheet. I'm sorry. Rows 148 to 152, please.
ctually, if we could scroll all the way up to the top, please, just to show the date.

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Q So this is a Statement of Financial Condition supporting spreadsheet as of June 30, 2014. Do you see that?
Yes.
MR. FIELDS: nd if we could scroll to Row 148 and just scroll up a little bit just so we can show what property it is.
Q You see in Row 118, Mr. Larson, it says 40 Wall Street?
Yes.
Q nd then in columns G and H there are dates June of 2013 and June of 2014. Do you see that?
Yes.
MR. FIELDS: Okay. If you can scroll down to Row 148.
Q So in June 30, 2014, Mr. McConney writes "Information provided by Doug Larson of Cushman & Wakefield Incorporated?"
So you would agree that you provided information to Mr. McConney; correct?
Yes.
Q It goes on to say "Only one similar size Class building sold in the downtown area in the last year (110 William Street) with a cap rate of 4.97 percent. There was one Class B building sold recently (61 Broadway.) The cap rate for this building is 4.46 percent. ccording to Doug, the spread between Class and Class B buildings is typically 50 to 100 bases points. To be conservative, we reduced the cap rate of 75 basis

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points to 3.71 percent. We used the average of these two rates."
Isn't it true, Mr. Larson, that the information Mr. McConney's relying on here is from discussions he had with you and also the market information that you were routinely sending to him?
Most likely, yes.
Q nd that doesn't necessarily mean that the valuations methods that he's using are your valuation methods; correct?
Correct.
Q They're his own valuation methods, but it's based on information that you are providing to him; correct?
Yes.
MR. FIELDS: If we could pull up Plaintiff's 730, please?
Q Mr. Larson, you were shown by government counsel the Statement of Financial Condition -- withdrawn.
You were shown a Statement of Financial Condition by government counsel yesterday. Do you generally recall seeing a document that looked like this?
Yes.
Q nd the one that we have up on the screen is Plaintiff's 730 dated June 30, 2014. Do you see that?
Yes.
Q On page three of the PDF I'll represent to you that the

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submission date of this document is November 7, 2014, okay?
Yes.
Q Do you see that? So this spreadsheet corresponds -- I'm sorry -- withdrawn.
This Statement of Financial Condition corresponds to the supporting spreadsheet that we just looked at a minute ago, okay?
Okay.
MR. FIELDS: ll right. If we could go to page four and if we could highlight the first two paragraphs. I'm sorry. Page six.
Q You see under the subheading or the heading "Basis of Presentation." Do you see that?
Yes.
Q It says, "The accompanying Statement of Financial Condition consists of the assets and liabilities of Donald J. Trump." You understand that to mean that this statement pertains to the assets and liabilities of President Donald Trump; correct?
Yes.
Q They're not your assets and liabilities or Cushman & Wakefield's; correct?
Yes.
Q It says, " ssets are stated at their estimated current values and liabilities at their estimated current amounts using

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various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals." Do you see that?
Yes.
Q Okay. You see the use of the appraisals; correct?
Yes.
Q You also see the use of capitalization of anticipated earnings, that's the direct cap method; right?
Yes.
Q You see recent sales and offers, that would be a sales comp method; correct?
Yes, it would.
Q nd estimated current -- sorry.
nd "estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals."
Do you understand this to mean that in not in every instance do they have to use valuations in conjunction with his associates?
That's what it appears to read.
Q So in some valuations it could be in conjunction with his associates and in other valuations it could not be in

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conjunction with his associates; correct?
That's what it appears to say, yes.
Q It continues: "Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Would you agree with me that there is considerable judgment necessary to value a property?
Yes.
Q Because appraisers can come up with different values and appraise different numbers for the same property on the same day; correct?
Yes.
Q " ccordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have been a material effect on the estimated current value amounts."
Had you read this disclaimer clause? Had the government ever showed you this disclaimer clause?
MR. L DOV: Objection.
MR. FIELDS: I'll withdraw it.
Q Had the government ever shown you this disclaimer clause?
MR. L DOV: Objection.
THE COURT: Ground?

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MR. L DOV: This isn't a disclaimer clause.
THE COURT: Sustained.
Q Withdrawn. Very good point.
Had government ever shown you you this clause?
Yes.
Q They had shown it to you?
I've seen this, yes.
Q Where have you seen it?
I saw it -- I saw it on Monday.
Q Where did you see it on Monday?
t the G's office.
Q You met with the ttorney General on Monday?
Yes.
Q The attorney -- the deputy attorney generals, the assistant attorney generals?
Yes.
Q Did you meet with the ttorney General herself?
No.
Q What did you discuss with at the ttorney General's Office on Monday?
We reviewed or was reviewed to me discussions about the information.
Q Is it your understanding from your discussions with the government that the government's theory is that your valuations are the ones represented in the statements of financial

condition and the supporting spreadsheets?
Just repeat that again.
Q Isn't it true that your understanding of what the government's theory is is that your numbers are reflected in these supporting spreadsheets and these statements of financial condition. Isn't that true?
MR. L DOV: Objection. I just want to -- I'm sorry. I just want to make clear that -- just with the additional "isn't that true," I just want to make clear that the question is to Mr. Larson's understanding, not to the government's theory.
MR. FIELDS: It's his understanding of the government's theory based on his meeting on the government on Monday and prior meetings and prior interviews with the government.
THE COURT: I'll let the witness answer if he can answer.
I think anybody could interpret this to mean, you know, that is -- I am stating as an outside professional that's what's implied and it's subject to interpretation.
Q So please tell me where you see your name there?
I don't see my name.
Q Okay. You're not stated there; correct?
No.
Q nd it says that in some instances they were allowing

outside professionals; correct?
Yes.
Q Not all the time?
I don't know.
Q Well, it says "in some instances," so that means not all the time; correct?
That's what that would mean, correct.
Q So you are making the assumption that you included in this paragraph; correct?
Yes.
Q But be that as it may, whether you're included in this paragraph or not, the values and the statements of financial condition and the supporting spreadsheets are Mr. McConney's values, not yours; correct?
That is correct.
MR. FIELDS: If we could pull up Plaintiff's 115 that has not been admitted.
Q I'm showing you what's been marked, Mr. Larson, as Plaintiff's 115. Do you recognize this to be another e-mail chain between you and Mr. McConney?
Yes.
Q nd on Tuesday, February 28, 2017 -- withdrawn.
MR. FIELDS: If you can go to page two of the exhibit, please?
Q Mr. McConney writes to you on February 27th of 2017:

"Hi, Doug. I hope you are well. Would you be able to send me current reports for midtown and downtown Class office buildings;" correct?
Yes.
Q nd you responded on the next page within a few hours on the bottom, "please see attached. Let me know if you need anything else;" correct?
Yes.
Q So you, again, sent him market information and reports and this is 2017; right?
Yes.
Q Then Mr. McConney responds on the 28th: "Doug, I'm looking at the information for 1221 venue of the mericas, which has a cap rate of 2.9 percent. The building is in the process of being modernized. Building 1290 was recently modernized for a comp. I'd like to use the cap rate of 1221, but since we are fully modernized can we reduce the cap rate of 2.9 percent?"
Then on March 1st you respond, "please call me when you have a chance to discuss."
Do you recall this call with Mr. McConney March 1st of 2017 or thereabouts?
No, I don't recall it.
Transcript continues on the following page....

Q Do you have any reason to despite that you actually had the call?
I do not.
MR. FIELDS: ll right. If we pull up -- sorry, Your Honor. May I move into evidence Plaintiff's 115?
THE COURT: Granted. It's in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 115.)
MR. FIELDS: If we could pull up Plaintiff's 742. Go all the way to the top.
Q So this is the supporting spreadsheet as of June 30, 2016 and I'll represent to you that the Statement of Financial Condition for 2016 was finalized on March 10th of 2017, okay. So that would have been about nine days after or thereabouts your phone call with Mr. McConney, okay.
Okay.
THE COURT: We don't know it was a phone call. He said he didn't remember it. He said it might have happened.
MR. FIELDS: He said that he didn't dispute that it happened.
THE COURT: I stand corrected. We still don't really know that it happened, but he is not disputing it. So let's assume it happened.
MR. FIELDS: Fair enough.
Q It was common practice for you and Mr. McConney

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whenever -- it was common -- was it common practice for you and Mr. McConney to speak over the phone when he requested information from you and you responded please call me?

I can't recall, but sometimes there were phone calls after, yes.

Q Okay. So if we could go to lines 801 and 802, please. It says, "June 30, 2016, 1290 based on information provided by Doug Larson of Cushman & Wakefield which reflects a cap rate of 2.9 percent for a comparable office building". ll right. So if you have plaintiff's -- if we could keep this on the screen, please, but if you have Plaintiff's 115 in front of you, Mr. Larson, it is a two-page exhibit. You see in the middle that Mr. McConney asks you if he can reduce the capitalization rate because 1290 is fully modernized. Do you see that?

Yes.

Q Then you have -- you ask him to have a discussion with him and you don't recall exactly if this discussion happened, but in the actual supporting spreadsheet at line 801, he uses a capitalization rate of 2.9 percent, correct?

Yes.

Q So the capitalization rate was not lower as he was initially hoping, correct?

You'd have to refresh me. What was the prior --

Q Sure. So Plaintiff's 115, he said he was looking for a cap rate lower than 2.9 percent, correct?

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Yes.

Q nd here, he used a 2.9 percent cap rate?

Okay. Yes.

Q So isn't it possible that you and Mr. McConney discussed over the phone that a 2.9 percent cap rate was the better cap rate to use?

MR. L DOV: Objection.

MR. KISE: What's the objection?

MR. L DOV: The witness has already testified that he doesn't recall a phone conversation much less the contents of that phone conversation.

MR. KISE: He testified to a lot of things and now he is recalling a lot more today.

MR. FIELDS: The question was was it possible, Your Honor.

MR. L DOV: The objection stands.

THE COURT: It is speculation, I guess, but I'll overrule the objection. Don't worry. Not that you would ever worry. Do you need the question read back? Do you remember it? Do you want --

Q Is it possible that you and Mr. McConney discussed on the phone that the 2.9 percent cap rate was the better cap rate to go with and not a lower cap rate like Mr. McConney wanted?

It's typically not my practice to, you know, provide a point estimate for a cap rate. It's, you know -- you would

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have or suggest, make a suggestion like that. We do usually talk in ranges. These are, you know, similar conversations that we had with, you know, over professionals, so when discussing certain sales or whatever. So I don't remember the conversation. So I don't -- I don't remember suggesting a certain cap rate on this building. I don't remember a conversation like that, but he could have used whatever he wanted to.

Q Fair enough. Is it possible that you provided him a range and he chose within that range or chose outside that range?

Yes.

Q You could have said between 2.8 and 3 is the good range and he chose the middle number? That's possible, correct?

Sure, but it -- it would be in rounded figures. 25 base points or something like. It wouldn't be that exact typically.

Q nd just so we're clear, Mr. Larson, you did an appraisal that we discussed. I think you discussed with government counsel yesterday Plaintiff's 1824 which has been admitted in evidence. I'm not going to ask you a lot of details about it, but you did an appraisal for 1290 venue of the mericas prepared for Deutsche Bank as an agent, correct?

Yes.

Q nd that was as of November 1, 2012, correct?

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Yes.

Q nd we would just -- we were just having a discussion about information that you were providing to Mr. Larson in approximately 2016 or 2017, correct, about 1290 venue of the mericas?

Yes.

Q So this would be approximately four, give or take, five years after you did an appraisal for that same property?

Just repeat that, so I understand the dates.

Q Sure. So the discussion that we were just having about the supporting spreadsheet from June 30th of 2016 was approximately four years after the appraisal. You did for that same property in 2012?

Yes.

Q nd at no point did you advise Mr. McConney that the correct capitalization rate to use was the one that you actually used in your appraisal, correct?

I don't remember having that discussion.

Q But there would have been no need for you to have that discussion because you can use whatever capitalization rate he sees fit, right?

That is correct.

Q ll right. Just the record is clear, this 1290 venue of the mericas appraisal contains the same or -- withdrawn. If you can go to page 189 of this report, please. You

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see the fourth bullet point. Does it appear to have the same limitation of use language that the other appraisals have had that we've looked at?
Yes.
Q So this appraisal would have been limited to the use of the client for which you did the appraisal for?
Yes.
Q If we could go to page three. nd just for purposes of the record, the second full paragraph, the first sentence. "This report was prepared for Deutsche Bank as agent Bank of China, UBS Securities, L.L.C. and Goldman Sachs Mortgage Company and is intended only for its specified use." So this appraisal could not have been used by the Trump Organization, correct?
Yes.
MR. FIELDS: Your Honor, may I have one moment, please?
THE COURT: Sure.
(Whereupon, there was a pause in the proceedings.)
MR. FIELDS: No further questions for me, Your Honor. Thank you.
THE COURT: Then let's take a break now then, I guess. Will there be --
MR. ROBERT: I have questions so after the break is fine.
THE COURT: One of these days, I'll remember that.

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MR. ROBERT: It is okay. I'm easy to forget, Your Honor.
THE COURT: No, you are a not. We will take the usual 10-minute-break over the next 15 minutes.
(Witness exits the stand.)
(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.
THE COURT: Just one word to counsel. s you know, we have one reporter at a time taking this all down. So please wait until the other person is finished before you start talking. No talking over each other. Okay. Witness. We're getting Mr. Larson back.
THE COURT OFFICER: Witness entering.
THE COURT: Okay. Let's start with the cross-examination by Mr. Robert.
MR. ROBERT: Thank you, Your Honor.
CROSS-EX MIN TION
BY MR. ROBERT:
Q Good morning, Mr. Larson.
Hi.
Q I'm going to ask you questions and as Your Honor has said earlier, I'm going to ask you to answer them yes or no. nd if you feel you can't, tell me and I will try to rephrase the question. Fair enough?

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Yes.
Q You testified this morning that you met with the government on Monday, correct?
Yes.
Q nd how many ssistant ttorney Generals did you meet with on Monday? More than one?
Yes.
Q More than two?
pproximately four or five.
Q Basically, you can fit on this table the number of assistant attorney generals you met with on Monday, correct? It is an easy question, sir. Yes?
Not the entire table, no.
Q Well, there are four people here and you said you met with four or five people, true?
Yes.
Q nd they showed you documents while you were meeting with them, correct?
Yes.
Q nd the purpose of that meeting was to prepare you for today, true?
What do you mean by "prepare"?
Q Did they ask you about your family?
No.
Q Did they want to know about your hobbies?

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No.
Q Did they want to talk about sports and current events?
No.
Q Did they want to talk about the presidential election?
No.
Q lthough, I know that came up a little. Withdrawn. Sir, they met with you to prep you?
MR. L DOV: Objection.
MR. ROBERT: What's the objection?
MR. L DOV: The question was --
THE COURT: The objection is withdrawn, right?
Q They met with you to prep you, to prepare you for testifying here today in court against President Trump and his company, correct?
What do you mean by "prepare"?
Q They went over with you the questions and themes they were going to ask you today, correct?
Yes.
Q nd they spent considerable time with you going over that, right?
Yes, for a few hours.
Q Your lawyers were with you in the meeting, correct?
Yes.
Q nd I think you have three lawyers here today. They were all with you, right?

They were not all there.
Q You at least had one lawyer there, correct?
Yes.
Q nd sir, prior to you meeting with them on Monday, when was the last time you met with them?
t deposition.
Q Between the deposition and the time you met with them two days ago, isn't it true that your lawyers have had conversations with members of the ttorney General staff; yes or no?
Yes, there's been some communication.
Q nd sir, as part of the stuff that they showed you and I'll use the word "stuff," they showed you those massive spreadsheets that you testified about at length yesterday to Mr. Ladov's questions, correct?
Yes, I saw those spreadsheets.
Q nd they showed you specifically where your name was referenced every time Jeff McConney said in words or substance he consulted and got information from you, correct?
Yes, I saw some of that information.
Q The same type of information that Mr. Ladov questioned you about yesterday, about where your name would be there and it will be about a conversation that you had with Jeff McConney, correct? Yes or no, sir?
I don't recall all of the topics.

Q I'm not asking you --
Could you restate that, please.
Q Sorry, sir?
Could you restate that, please.
Q s part of the meeting you had -- withdrawn.
s part of the prep session that you had with the ttorney General's office on Monday, was part of what they showed you the back-up spreadsheets to the Statement of Financial Condition; yes or no?
I believe so.
Q You believe so? Withdrawn.
Was the first time you saw them when Mr. Ladov put them on the screen yesterday?
No, I saw those at my deposition.
Q nd you also saw them on Monday, true?
I believe so.
Q You don't know definitively?
There was a lot of information to look at, but most likely.
Q They showed you a lot of information on Monday, right?
Yes.
Q They showed you document after document after document, correct?
Yes.
Q But they didn't show you the two documents that my

colleague spoke to you about this morning about the conversations you had with Jeffrey McConney, did they?
No, I haven't seen those.
Q ll I want is a yes or no, sir. If I want more, I'll ask you, or I'll ask His Honor to ask you to give me more. The answer is they didn't show it to you, did they?
No.
Q They spent time --
THE COURT: Wait. Wait. I advise all attorneys not to ask questions in the negative. "They didn't do that, did they?" No or yes could be interpreted either way. it's -- I'm changing what I said before. It is somewhat ambiguous.
MR. ROBERT: I will rephrase the question.
THE COURT: sk questions in the positive, if possible.
Q Sir, when you met with members of the ttorney General's office on Monday, were you shown the documents that Mr. Fields showed you this morning, specifically Plaintiff's Exhibit 109 and 3184, which show the back and forth between you and Jeff McConney?
No.
Q Because the first time you saw them was today?
Correct.
Q So with all of the preparation with the ttorney

General's office, they never decided to show you these two documents, did they?
No, I did not see those documents.
Q So in all of their prep about your interaction with Mr. McConney, they never attempted to refresh your recollection with these documents, did they; yes or no?
No.
Q They let you come here and testify yesterday and give the illusion that you had no interaction with Mr. McConney with regard to the cap rates, correct?
MR. L DOV: Objection.
THE COURT: Can we get a readback on that one?
(Whereupon, the requested portion of the record was read back.)
THE COURT: That's cross-examination. I'll allow it.
Q nswer the question, sir, please.
MR. ROBERT: Do you want it read back with Your Honor's permission? We will read it back to the witness.
THE COURT: We will have it read back one more time.
MR ROBERT: Thank you.
(Whereupon, the requested portion of the record was read back.)
What do you mean by "illusion"?

Q You sat here yesterday. You swore under oath as Mr. Fields showed you to that question and answer and we can go through the whole thing again, but I'm trying to save time. nd you intimated in words or substance that you did not speak to Mr. McConney about cap rates. Do you remember that?
MR. L DOV: Objection.
THE COURT:
But I did --
THE COURT: Is that withdrawn or not?
MR. L DOV: I object because it misstates the testimony.
MR. ROBERT: You can fix it however best you can.
THE COURT: I can't hear you.
MR. L DOV: There is no foundation for the question, Your Honor.
MR. ROBERT: Your Honor, it is cross-examination.
MR. L DOV: I understand that it is cross-examination, but that's my objection.
MR. ROBERT: They don't like where this is going. I want to do it as quickly, which is what you said, try to be efficient as possible. I think he remembers what happened an hour ago. I certainly hope he does.
THE COURT: Please read back the question.
(Whereupon, the requested portion of the record was read back.)

THE COURT: Objection overruled.
You want me to answer?
Q Yes.
THE COURT: Yes.
Q I want you to answer truthfully.
Yes.
Q Yes. When you testified yesterday for the ttorney General, the question was asked by Mr. Ladov when the name on one of the McConney spreadsheets said Robert Farwell. Do you remember that?
Yes.
Q nd there was a question that was asked of you what was your reaction when you saw that. Do you remember that?
Yes.
Q Isn't it a fact that you gave Robert Farwell's name to Jeff McConney?
Most likely.
Q So there was no surprise when you saw the name, right?
No, I know him.
Q You know him because you gave the name to Mr. McConney, correct?
No. I know him I've worked with him for many years.
MR. ROBERT: Can we recall Plaintiff's Exhibit 3184. If you could hand it to the witness, please.
Q This is one of these two documents the ttorney General

didn't show you on Monday. Let's go to page two, please.
"Jeff" -- you see that, sir?
Yes.
Q " ttached are the New York City sales. Please reach out to Robert Farwell for San Francisco cap rates." Do you see that?
Yes.
Q You were specifically giving Mr. McConney the name of Mr. Farwell, so that Mr. McConney could obtain cap rates for the San Francisco property, true?
Yes.
Q You know, this morning you were also questioned about differences between your 2012 appraisals and your 2015 appraisal. Do you remember that, sir?
Yes.
Q Okay.
MR. ROBERT: nd let's call up Plaintiff's Exhibit 3208 for a second, please. Let's turn to page 6 of 215.
Q I want to make sure I understood something correct. When Mr. Fields asked you if you backdated this document, your answer was what?
It would have been a typo.
Q Let's answer my question. Was it backdated; yes or no?
That would have been very unlikely because --

Q That's not my question, sir, please.
MR. ROBERT: Your Honor, it is a yes-or-no question.
Q Did you backdate it; yes or no?
No.
Q So you didn't backdate it and your answer today is, "Well, I must have just made a mistake," correct; yes or no?
The --
Q Yes or no, sir?
THE COURT: If he can't answer it yes or no.
I cannot.
Q Do you have a problem understanding what I'm saying, sir?
What I'm telling you --
Q Yes or no?
No.
Q So your position is that this was a typo, right, yes or no, under oath?
It most likely would have been a typo, yes.
Q Was it also a typo that you changed the number by $23 million in a 24-hour period?
No.
Q That was intentional, right?
Yes. nd to make it clear because --
Q Sir, it was intentional, correct? They're going to get

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a chance to get up and ask you whatever questions they want.
nswer my question. It was intentional, true? You did it deliberately, true? It wasn't a typo, true?
Not that I can recall, no.
Q So it was intentional. I'm not ascribing ill motive yet, but you went and changed it, correct?
The date of --
Q Yes or no --
Deliberately needs to coincide with the date --
Q Sir, that's not my question and we are off the dates sir. I'm talking about the money. You changed it by $20 million, correct?
Yes.
Q You did that after speaking to your client, correct?
Yes.
Q So after your conversation with the client who retained you to give an independent appraisal, you changed the amount of the appraisal by ten percent, correct?
By $20 million, yes.
Q Which is ten percent.
Correct.
Q nd there's nothing wrong with that, is there?
Not at all.
Q Because valuations can be subjective, true?
Yes.

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Q In 2012 you had prepared two appraisals, the ones we're talking about and at that time, you have had made a projection as to what the income capitalization conclusion would be three years later for 2015. Do you remember that, sir?
Yes.
Q nd back in 2012 on your two appraisals, on one of them, you had a conclusion that it would be worth, and this is 40 Wall Street, $240 million, correct?
Could you show me again, so I --
Q Sure.
MR. ROBERT: If we could show the witness Plaintiff's Exhibit 121, page 174, please.
Q While these are coming up, sir, 40 Wall is a beautiful building, is it not?
Yes.
Q t one point, it was the tallest building in New York, wasn't it?
I'm not sure.
Q Well, it was -- it went from there to the Chrysler Building to the Empire State Building. You're not aware of the progression of the tallest building in New York?
I know of the tallest.
Q Can you agree with me that it is right next to the New York Stock Exchange in lower Manhattan?
It is.

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Q It is an iconic building, correct?
How do you define "iconic"?
Q We're not talking about Maiden Lane. Wall Street is a known street in the world; fair statement?
Yes.
Q nd a building on Wall Street is something the world knows it is a building on Wall Street, correct?
Yes.
Q Let's go back to the exhibit. Do you have it in front of you now, sir? Is it up on the screen?
MR. ROBERT: No. We want the whole page, please.
THE COURT: Chris, I told you you'd learn about New York.
MR. KISE: Very good.
MR. ROBERT: He's learning it from me, not the witness, but that's okay.
Q You see that, sir, at the bottom?
MR. ROBERT: Keep going down, please.
Q 240 million, do you see that?
Yes. That's --
Q Yes or no?
THE COURT: It is a yes or no.
Yes.
Q nd then in the subsequent appraisal after you changed the $20 million after talking to your client, the lender, that

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number increased to $260 million, correct? nd I can show it to you.
Please, do. Thank you.
Q Sure.
MR. ROBERT: If we can show the witness Plaintiff's 1435, page 173.
Q It is 260 million, correct?
Yes, correct.
Q nd then in 2015 when you did a valuation of 40 Wall, you came up with a number of $540 million, correct?
Yes.
Q Now, I'm not good in math, so I'm not going to ask you to take judicial notice of percentages, but can we agree that that's more than a quarter of a billion dollars?
Yes.
Q That's the amount the ttorney General is seeking from my client, right?
I don't know anything about the case.
Q Sir, you were off by a quarter of a billion dollars, correct?
No.
Q So which appraisal is wrong, this one or the one from 2015, or is it that appraisals are subjective?
They're both correct and they're -- they're subjective.

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Q nd they are subjective because you are allowed great latitude in the conclusions you make as a professional, correct?
Yes. Can I elaborate?
Q No. I'm sure they're going to have a lot of questions on this.
But at the end of the day, let me ask you this question. Did the market in lower Manhattan on Wall Street increase by 100 percent between 2012 and 2015?
I can't speak to Wall Street, but I can tell you there are --
Q Do you -- sir, is there any market in New York City --
MR. ROBERT: Sorry, Your Honor. Okay. I tried to get a yes or no. I will withdraw the question. I'll ask it a different way.
THE COURT: Okay.
Q re you aware of any market in New York City commercially that increased 100 percent in value from 2012 to 2015; yes or no?
Yes.
Q nd is this one of those?
I don't know.
Q Nonetheless, we are a quarter of a billion dollars off, correct?
Yes.

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Q Sir, even in 2015, your number was $540 million, correct? I can show it to you if you want.
Yes. I remember.
Q Okay. nd you also remember Mr. Fields showing you that the taxable value by the New York City Tax ssessor was 65 million. Do you remember that?
I don't remember the exact number.
Q Okay. So let's help refresh your recollection.
MR. ROBERT: If we could pull up Plaintiff's Exhibit 118, number 63 of 213. If I could walk over to show them the page.
THE COURT: Yes.
Q I'm actually going to show it to you as Plaintiff's Exhibit 1177. It is the same document. Is that the page you're looking at, sir?
This must be a different document.
Q I'll ask you to look at the one on the screen, sir. Do you see that the assessed taxable value is $65 million?
Yes.
Q nd you testified yesterday that the tax assessed value and the appraised value are two different things, correct?
Yes.
Q nd the fact that your number is eight times greater than that doesn't mean that you attempted to mislead anyone, correct?

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That is correct.
Q nd the fact that your number is eight times greater than the assessed value is no evidence of fraud by you, correct?
THE COURT: Calls for a legal conclusion, I believe.
Could you repeat that?
MR. ROBERT: I withdraw the question.
Q Even though you increased the value by a quarter of a billion dollars, sir, from 2012 to 2015, your appraisal doesn't take into account the fact that the higher floors in that building could be converted to condos, does it; yes or no?
No, it does not.
Q nd, sir, you know that there is a market in New York City for developers to convert office buildings into condominium use, correct?
Correct.
Q nd you know especially in 2015 and 2016, that was a pretty hot thing to do, correct?
Yes.
Q You know, and I'll state the obvious, but my clients are developers, correct?
Yes.
Q nd that's the kind of thing developers do?
Yes.
Q They look prospectively as to what they could do with a

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property, correct?
Yes.
Q nd that's different from a lender, correct?
It could be.
Q Well, sir, you testified yesterday that most of your business comes from working for lenders, correct?
Yes.
Q nd to be clear, you're not a builder, correct?
No.
Q You're not a developer?
No.
Q You're not an accountant either, right?
No.
Q You're an appraiser?
Correct.
Q s an appraiser, most of your business comes in from working for banks, correct?
Yes.
Q Would you agree with me, sir, that banks tend to be very conservative in their values; yes or no, sir?
Not always.
Q Well, sir, when a bank is appraising a property, the bank is appraising the property to make sure that in an emergency, they can get out, right?
Yes.

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Q They don't have the same view that my clients do when they're looking at a property of what can I turn this into in five or ten or fifteen years, right?
Yes.
Q What's my exit strategy tomorrow if there is a default and I have to get out, right?
Yes.
(Continued on the next page.)

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Q You testified yesterday that an appraisal is more art than science. Do you remember that?
Yes.
Q So would you agree with me, sir, that the truest best indication of value is what someone will pay for something; right?
Yes, that's a definition of market value.
Q The actual closing of a transaction shows what someone was willing to pay; correct?
Yes.
Q nd I forgot, you've been doing this for more than, what was it, 20 or 30 years? I don't remember.
30.
Q nd in your 30 years, sir, you have certainly seen instances where properties sold for much higher than what you had appraised them for; correct?
Yes.
Q Sir, were you aware -- withdrawn.
Did the ttorney General share with you in the prep session that there was an appraisal done in 2020 for the Trump Old Post Office for $222 million for the bank and less than two years later the Trump Organization sold that property for $389 million. Were you aware of that? Yes or no?
MR. W LL CE: Objection. Relevance.
MR. ROBERT: Relevance? I want to see if he was

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aware of it. I don't know what you guys talked about in your meetings.
THE COURT: Overruled.
Could you repeat the question?
MR. ROBERT: Could I have it read back, Your Honor?
THE COURT: Read back, please.
MR. ROBERT: Thank you.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
No.
Q But it doesn't surprise you that an asset was sold for higher than an appraised value; correct?
Does not surprise me.
Q Because certain assets can be valued in different ways; correct?
Could you be more specific?
Q Well, when you're evaluating a particular asset there are many factors you need to look at, particularly in real estate; correct?
Yes.
Q So yesterday, when Mr. Ladov was questioning you, you were asked questions about Niketown. Do you remember that?
Yes.
Q Did you know that Niketown is situated on one side by Tiffany & Co? Did you know that?

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I did.
Q nd on the other side it's IBM. Did you know that?
Yes.
Q So would you agree with me that both of those stores are landlocked and Niketown is what is in between them?
Yes.
Q nd sir, when a business is landlocked it and wants to expand isn't it true in many instances even if the value is high they will overpay by exponential numbers to be able to acquire the land?
It all depends.
Q Well, sir, there is only one 57th Street and Fifth venue in the world; true?
Yes.
Q That's truly the Tiffany location, no pun intended, because Trump Tower is there and Tiffany & Co is there; right?
Yes.
Q nd the mere fact that you have a marquee location adds value, doesn't it?
Typically, yes.
Q The mere signage on Trump Tower that says "Trump Tower" has value on it, doesn't it?
Could you repeat that?
Q The mere presence of the name Trump Tower in those big letters in front of the building has a value, doesn't it?

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Naming rights have value.
Q They do.
nd sir, there -- when you have a unique property such as Niketown at 57th and Fifth, there is no cookie cutter valuation method, is there; yes or no?
Please repeat.
Q When you have a marquee --
THE COURT: Wait. sk it in the positive, though. You keep asking negative questions.
Q Would you agree with me, sir, that a unique, unicorn trophy property, whatever you want to name it, there are unique characteristics to the property, valuation is subjective; true?
Correct.
Q You were asked questions about the statements of financial condition and my colleague, Mr. Fields, held -- showed one to you earlier today and Mr. Ladov showed one to you yesterday. Do you remember that?
Yes.
Q nd you had said that you had remember having seen it; correct?
The best of my recollection.
Q Was that one of the documents that the ttorney General's Office showed you on Monday?
Yes.
MR. ROBERT: Can we call up Plaintiff's

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Exhibit 729, please? nd go to page four? I'm sorry, page six of 26. I'm looking at the -- and let's go to the second paragraph.
Q nd this morning Mr. Fields was drawing your attention to the third line -- let's start from the beginning. You see where it says, "Such valuation methods include?" The beginning, sir?
Yes.
Q nd then we go down three lines and it says "and in some instances outside professionals?"
Yes.
Q But if you could read the last sentence into the record, sir.
MR. W LL CE: Objection. These aren't his words. Counsel should be reading it into the record.
THE COURT: I'm not sure my colleagues would agree with me, but I don't think you have an absolute right to make him read something. You can read it if you want.
MR. ROBERT: I'm happy to read it.
Q re you able to read the words, sir?
Yes.
Q Would you please read them with Your Honor's permission?
THE COURT: If he wants to read them, he can read them.

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Q loud, sir.
"The use of different market assumptions and/or estimation methodologies may have a material impact" --
THE COURT: That doesn't say "impact."
"Effect on the estimated current value amounts."
MR. ROBERT: May I should have read it. I should have listened to Your Honor's admonition before.
Q So sir, what it says is the use of different -- withdrawn.
This is something that is contained in President Trump's Statement of Financial Condition; correct?
Yes.
Q nd the language says "the use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts." Do you see that?
Yes.
Q You agree with that, sir, don't you? Yes or no?
I agree on what it says.
Q nd you agree that the use of different market assumptions or estimation methodologies may have a material effect on estimated current values, don't you? Yes or no?
Can you clarify the question? re you asking --
Q Sir, earlier you testified that you didn't make a mistake in theory in your 2012 appraisals; correct? Even though

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we are now seeing that you are off by a quarter of a billion dollars; correct?
No, I did not make a mistake.
Q You stand by it even though you're off by a quarter of a billion dollars? That's your testimony?
I would need to elaborate to answer.
Q I'm sure Mr. Ladov is going to have plenty of questions for you, sir, but what I'm asking you there is a delta of a quarter of a billion dollars?
There was a delta of that.
Q nd through your testimony you have said that different market assumptions can make differences in valuations; correct?
Yes.
Q Just like a different cap rate can affect the value of property; correct?
Yes.
Q Mr. Fields this morning took you through an analysis of how I think it was like a hundred million dollar difference because based on what the cap rate would be based on the net operating income. Do you remember that?
Yes.
Q So, sir, at the end of the day, different market assumptions and/or estimation methodologies can materially affect a value; correct?
Yes.

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MR. ROBERT: Just a moment, Your Honor.
THE COURT: Sure.
MR. ROBERT: I have no further questions at this time.
THE COURT: Will there be any redirect?
MR. L DOV: Yes, Your Honor.
THE COURT: Please proceed with the redirect.
MR. L DOV: Thank you, Your Honor.
REDIRECT EX MIN TION
BY MR. L DOV:
Q So Mr. Larson, during cross examination the defendant shows you a couple of documents and suggested that you had not seen them in time in conversations with the ttorney General's Office before, so I just want -- I'm not asking whether you recall that or not. I just want to show you a couple of those documents and discuss it with your prior testimony.
MR. L DOV: So I'd like to bring up Plaintiff's Exhibit 109.
MR. ROBERT: That mischaracterizes the testimony, Your Honor. He wasn't shown that on Monday. If he would have seen it years ago I don't think the witness -- the whole point is when he met with them on Monday to prep him, they hid these documents from him. The fact that he may have seen them --
THE COURT: So you think there is a -- the question

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was improper because it assumes something not correct?
MR. ROBERT: It assumes something that was not clear, that was not part of the cross examination and redirect. It assumes something that was not part of the cross examination because redirect is limited to the cross. The point was that the ttorney General did not share the document with him on Monday when they prepped him.
THE COURT: Did Mr. Robert convince you that there is an improper assumption there that you're mischaracterizing the testimony? That's a yes or no.
MR. L DOV: No, but I'm happy to ask a different question.
THE COURT: Okay. It could be -- I assume it's going to be related?
Q Mr. Larson, may I show you a document?
Yes.
Q Okay. So I'd like to show you Plaintiff's Exhibit 109 and as you can see in the middle of the screen there, there is an e-mail from Jeff McConney to yourself dated September 16, 2014. nd it says, "Doug, I hate to be a pest, but the accountants are coming in tomorrow to go over my valuations. ny chance you can answer my question below? Sorry for the last minute question." Do you see that?
Yes.
Q So I'd like to do --

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MR. L DOV: Can you do side by side with page 57?
Q So I'd like to show you some of your prior testimony from the investigative hearing that you referenced earlier. This was essentially a deposition taken in -- on October 29, 2019?
MR. ROBERT: Objection.
THE COURT: What's the ground of the objection?
MR. ROBERT: Improper bolstering of the witness's testimony. He already testified he didn't remember it, he didn't know it and he wasn't shown it on Monday. So what's the point of showing something from three years ago to try to bolster his credibility? Improper.
MR. W LL CE: Considering the defendants have accused him of perjury I think showing him his testimony is consistent with his prior statements is entirely appropriate.
MR. KISE: The time to have done that was when they had him on direct. That would have been the time to make the record clear.
THE COURT: I tend to be very liberal in what I allow in terms of cross, redirect, but if you attack his credibility they're allowed to rehabilitate him.
MR. KISE: But not with the attempts that they had in their possession on Monday. They can't now bolster his testimony and attempt to create a scenario that didn't

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exist. We ask --
MR. L DOV: Your Honor, I don't know how to argue this because it's simply wrong. They accused him of perjury. We want to show that his testimony has been consistent. I honestly can't figure out what the legal objection is here.
MR. KISE: To be clear, Your Honor, I never accused the witness of perjury. What I said is that the government didn't have any regard for this witness's rights and that's why I wanted to make sure they were covered. I did not accuse the witness of anything. In fact, I think the witness is frankly in the middle here.
THE COURT: I think what you said was they're trying to get him to commit perjury which is different from saying that he perjured himself. I agree. I think this is totally fair game. You can ask the question. Objection overruled. Your question in the testimony, he's allowed do this. I'll give you a recross later.
Go ahead.
MR. L DOV: Thank you, Your Honor.
Q So if I can direct you to line 17 of page 57, the question is, "Do you see that Mr. McConney writes I hate to be a pest, but the accountants are coming in tomorrow to go over my valuations."
nd I just want to show you is it correct that the

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highlighted language on the left hand side from your prior testimony and the highlighted language on the right hand side from the e-mail that you looked at earlier are the same?
Yes.
Q So this is -- so during that testimony you were being asked about this same e-mail; correct?
Yes.
Q Okay. So I just want to read the rest of your testimony there.
MR. ROBERT: Objection, Your Honor.
THE COURT: Ground?
MR. ROBERT: The EUO is inadmissible and can only be used for impeachment purposes, not for bolstering purposes.
THE COURT: But it's rehabilitation. Overruled.
Q So the next testimony says, "do you remember reading that?"
" NSWER: I remember reading it now. I don't remember back then. I don't remember this e-mail."
nd it says:
"QUESTION: Were you aware of McConney preparing valuations that his accountants would then review?
" NSWER: I wouldn't know that.
"QUESTION: You don't know anything about valuations that Mr. McConney" --

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MR. KISE: Your Honor, objection. He's just simply testifying at this point. He's just reading something into the record something that's clearly hearsay and inadmissible. That's not refreshing the witness's recollection. Refreshing the witness's recollection is showing it to him and saying do you recall this. This is not rehabilitation. He's simply reading in something from years ago that's clearly hearsay. He's just reading hearsay into the record. There is no question here at all. He's just reading questions and answers. This is extraordinarily improper. Extraordinarily improper.
THE COURT: Could you finish reading?
MR. L DOV: I have not finished reading.
THE COURT: Were you going to ask a question at the end of the reading?
MR. L DOV: I was going to ask a question.
THE COURT: Overruled.
MR. KISE: But the question is going to be do you remember this from three years ago now that I've read it into the record. That's improper. That's not refreshing recollection.
THE COURT: It's fair game. It's rehabilitation. Overruled.
MR. L DOV: I guess I would like to start again without interruption, please.

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THE COURT: Yes.
Q So page 57 at the bottom, line 25?
THE COURT: Give me one more second.
MR. L DOV: Yes, sorry.
THE COURT: I'm sorry for the continuing interruption. Read whatever you want but as long as there is a question.
MR. L DOV: There will be a question.
Q So on line 25 of page 57:
"QUESTION: Were you aware of McConney preparing valuations that his accountants would then review?
" NSWER: I wouldn't know that.
"QUESTION: You don't know anything about valuations that Mr. McConney prepared?
" NSWER: No. That would be beyond me. I wouldn't know anything about that.
"QUESTION: You never advised Mr. McConney on how to make certain valuations of his properties?
" NSWER: We get calls from a lot of clients asking about cap rates, market information, in this case a ground lease, you know, what the impact of the cap rate would be. So this is very common. What the client does with that information is up to them."
So my question, Mr. Larson, is was the testimony that you gave in -- sworn testimony in 2019 consistent with

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the testimony that you gave today under oath?
THE COURT: Well, I think the record will have to speak for itself whether it's consistent.
MR. KISE: gain, he's just reading that into the record in an attempt -- now who is reading things for the press, right? He's just reading that into the record so that he can attempt to bolster this witness's testimony. His testimony was here in court. That's why we're here in court. We don't read hearsay into the record on a regular basis. This is extraordinarily improper and that question at the end was a completely bogus question "oh, is that right? Is that what you said three years ago?" That's completely improper.
MR. L DOV: Your Honor, New York Evidence Rule 8.31 says that "prior consistent statements are admissible when offered to rebut an express or implied claim of recent fabrication." I would say "express" even though I know Mr. Kise disagrees and says "implied." I think it clearly applies here.
THE COURT: The objection is still overruled or overruled again.
MR. L DOV: Can I get a read back on the question, Your Honor?
THE COURT: Not the whole --
MR. L DOV: Just the --

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THE COURT: Just the question part?
MR. L DOV: I can just ask it.
Q Mr. Larson, was that your testimony?
Yes.
MR. L DOV: Let's move forward.
Q I would like to turn right now to Plaintiff's Exhibit 115. nd, again, if you look in the middle of this page, this was a document that you were asked to review today. This is an e-mail from Jeff McConney to yourself from 2017 and in the middle it says, quote, "Our building, 1290, was recently completely modernized. For a comp I'd like to use the cap rate for 1221, but since we are fully modernized can I reduce their cap rate of 2.90 percent."
Now, I want to look at your prior testimony at page 139. nd if we turn to line ten, it says:
"QUESTION: So Mr. McConney says to you," quote, "our building, 1290, was recently completely modernized. For a comp I'd like to use as a cap rate for 1221, but since we are fully modernized can I reduce their cap rate of," end quote, "2.90 percent?" Is this the same language in both documents?
MR. KISE: Same objection, Your Honor. Just reading hearsay into the record. They could have done this on Monday with him on his prep session. If they wanted the truth in the record, they certainly could have put it in

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there. This is improper hearsay.
THE COURT: I have a different issue with this. So ask him to read B and then say is that the same as , either if is or it isn't.
MR. L DOV: Sorry, Your Honor.
THE COURT: So I'll sustain my own objection.
Q I will represent to you, however, that his testimony -- the question shows it was a question based on the document that you were shown earlier today. So I'd like to move forward and read back to you -- read back to you your answer there -- actually, the rest of the question is "do you remember this document?"
" NSWER: I saw this the other day when I came in.
"QUESTION: -- you replied, quote, "please call me when you have a chance to discuss. Do you remember a phone call after this e-mail exchange?
" NSWER: No, I don't remember the phone call.
"QUESTION: McConney is asking here if he can reduce a cap rate of 2.9 percent in valuing a property; is that right?
" NSWER: That's what it says, yes.
"QUESTION: He asks that question to you.
" NSWER: He asked the question, yes.
"QUESTION: nd you say please call?
" NSWER: Yes.

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"QUESTION: Would you have provided an answer to his question on that phone call?
" NSWER: I don't think you can just look at the building and apply a 2.9 cap rate. typical response would be -- a typical discussion with a client would be to talk about ranges of cap rates, the market, the building, etc., what other trades have been in the market or sales have been in the market, what cap rates do those apply. So that would be a typical conversation I would have with a client. I don't remember this call."
So Mr. Larson, was this your testimony from four years ago?
MR. KISE: gain, Your Honor, this is beyond absurd. I mean, he just read an entire page of the transcript. ll this demonstrates is that they knew yesterday this man's testimony was false. That's all that demonstrates. They had this in their possession and they're reading hearsay into the record. They're trying to improperly bolster his testimony. It's inappropriate. It's just -- it's hearsay. There is no exception to the hearsay rule and this is not rehabilitation. The prior consistent statements are limited to the witness's statements, not their leading questions, not all of their leading questions that are built in there. They're reading their own leading questions which is inappropriate on direct or redirect into

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the record and then parroting his answers back and asking him "is this correct, is this what's in front of you." This is highly improper. There is no basis or foundation at all.
MR. W LL CE: I believe Mr. Kise's objections is he does not like his testimony.
MR. KISE: No. The objection is this is hearsay and we stick to the rules, at least we do on this side of the table.
MR. W LL CE: I'll try to keep it to a minimum, Your Honor. It's a prior consistent statement. If he wants to go back and brief this issue, it's a bench trial. He is free to. I see him --
THE COURT: Let Mr. Wallace finish.
MR. W LL CE: He's offering a prior consistent statement. He just said that the witness testified falsely. In clarifying his statements have been consistent over years is perfectly reasonable to rehabilitate testimony, and as an exception to the hearsay. nd I will leave it there.
MR. KISE: Your Honor, the witness's statements might under other circumstances qualify as prior consistent statements. Here, 90 percent of what they're reading are their own leading questions which would never be allowed in this courtroom. I mean, all of it is a question and then at the end if they want to read just his answers back -- a prior consistent statement is, you know, I said four years

ago the light was green and today I made a mistake and now I want to rehabilitate him saying four years ago the light was green. That's simple. It's not, like, pages and pages of their question-and-answer series. They're bringing in hearsay. They're bringing in a hearsay transcript which Your Honor ruled was not admissible. Other than for impeachment, I gather they're not impeaching their own witness, and at this point, at this point if they want to rehabilitate him with his own statements, that's one thing. But here they're just reading their questions into the record and they're creating it -- and the only question at the end is "is that right."

MR. L DOV: Can I brief --

THE COURT: Don't we need to hear the questions so that we know the context of the answers?

MR. KISE: We did. We're still on that one question where he read a page or so of transcript and then said "isn't this what you said a few years ago." I mean, that's preposterous.

THE COURT: I don't think it's preposterous. Objection overruled.

MR. KISE: Prior consistent statements are one at a time "did you say this on this date, did you say this on this date" but not all of this question-and-answer series.

THE COURT: Everybody just give me a moment.

(Whereupon, there is a pause in the proceedings.)

THE COURT: I'm looking at 8.31, Prior Consistent Statement in Fact. I'll read it, if Mr. Kise won't object.

MR. KISE: No.

THE COURT: " statement of a witness made before the witness's testimony at a time when there was no motive to fabricate" how do we decide that "and which is consistent with that testimony is admissible to aid in establishing the witness's credibility when a party creates the inference of or directly characterizes the testimony of a witness as a recent fabrication. That's set forth," blah, blah, blah. Objection overruled. You can ask what you want. Read what you want, ask what you want, but I'll be following carefully.

MR. KISE: gain, I just want to be on the record, Your Honor, his statements are what are referenced in the questions. So it's just a continuing objection?

MR. L DOV: Can you please admonish Mr. Kise to stop speechifying for the press or whatever it is he's doing?

MR. KISE: No, I'm not. I'm just trying to stop them from muddling the record. It's pretty simple and they don't like it and it's obvious they're accusing me of all sorts of bad things.

THE COURT: I'm not accusing of you anything. I'm just overruling your objections.

MS. F HERTY: Sorry.

THE COURT: gain, maybe other judges will do this. I tend to be somewhat liberal. We can go back and forth and back and forth and I'll do the best can I can.

Okay, go ahead.

MR. L DOV: Thank you, Your Honor.

Q I believe, Mr. Larson, the question was was this your prior testimony?

Yes. This is what I could remember four years ago --

Q Okay. I -- I'm sorry.

-- at that time, yes.

Q I think the only other question I had you had been asked questions about 40 Wall Street earlier.

Do you know one way or the other whether Mr. Trump currently retains the legal right to convert 40 Wall Street into condos?

I don't know.

MR. L DOV: No further questions, Your Honor.

THE COURT: ny recross?

MS. H BB : One second.

(Whereupon, there is a pause in the proceedings.)

Hash.

MS. H BB : Your Honor, we'll be brief.

THE COURT: Okay.

MR. ROBERT: May I proceed, Your Honor?

THE COURT: Please proceed with the recross.

Q Just to be clear, after that whole back and forth we had here the fact still remains during your prep session on Monday, the ttorney General did not show you these two documents; correct? Yes or no?

No, I don't recall.

Q nd they didn't discuss them with you either because if you had you would have committed perjury yesterday; right -- withdrawn.

MR. L DOV: Objection.

THE COURT: Next witness? I assume there is no re-redirect?

MR. L DOV: We are done, Your Honor. Thank you.

THE COURT: We have about 20 minutes left. Let's get the next witness.

Transcript continues on the following page....

MS. F HERTY: Good afternoon, Your Honor. Colleen Faherty here for the People. We call Jack Weisselberg to the stand, please.

THE COURT: Let's get him S P.

MS. F HERTY: Thank you.

THE COURT OFFICER: Witness entering.

J C K W E I S S E L B E R G , a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE COURT OFFICER: Please state your full name and either home or business address on the record.

THE WITNESS: Jack Weisselberg. 9079 Dye Cabins, Drive, Park City, Utah.

THE COURT: I'm going to ask the witness, like I ask everybody else, to speak directly into the microphone as close as you can.

Let's proceed with the direct examination.

MS. F HERTY: Thank you, your Honor.

DIRECT EX MIN TION

BY MS. F HERTY:

Q Good afternoon, Mr. Weisselberg. I'm going to ask you a few introductory questions first, okay.

So can you, please, just describe your educational background for me?

Sure. I went to Penn State University; graduated in

2000.

Q nd which campus did you graduate from, sir?

University Park.

Q Did you have any concentrations or majors from Pennsylvania State University?

Yes, in real estate.

Q ny other concentration or particular focuses of study?

Focused on finance.

Q nything else?

No.

Q Do you have any postgraduate degrees beyond college?

No.

Q Do you hold any professional certifications or licenses?

No.

Q fter 2000, once you graduated from Penn State University, can you, please, generally describe for me your work experience?

I began working at UBS Investment Bank in 2000, May of 2000. Then in 2005, we left UBS, stayed within UBS, but started a hedge fund called Dillon Read Capital Management which was a subsidiary of UBS. In 2007 when the subprime crisis happened, we went back to UBS and I was there for a year until 2008 and then I began working at Ladder Capital in 2008 and I've been there since.

Q So starting with the time when you were at the first position at Dillon Read, what title did you hold there?

Well, my first position was at UBS and I was an associate director.

Q Did you hold any other titles when you were at UBS?

I don't recall if I became director at UBS or it was at Dillon Read, but it was around that time.

Q Okay. t any point, were you identified as an analyst in your job positions?

Yes. When I was an associate, I was an analyst. That's where I began.

Q nd what are your responsibilities as an analyst?

Well, I was an analyst within with the origination group, so I supported four originators that were bringing loans into UBS.

Q Can you describe for me what that means?

So when packages would come in, I would enter the data into an underwriting model, look at pictures, go through property, market information, and you know, figure out if a deal would -- could make sense for us to do.

Q When you say "packages would come in," what does that reference to the word "packages"?

So when somebody wants a new loan, they'll send us an offering memorandum which is just a book that contains all the information necessary to find out if they can get a loan which

will include pictures, it will include rent rolls, operating statements, some market information, and sometimes some sponsoring information as well.

Q So you're gathering information to size up loans; is that a fair characterization?

Yes.

Q Okay. nd you and I both use the same word "size" or "sizing." Can you explain for me what that means, please?

Sure. It is an underwriting Excel spreadsheet and it is we're analyzing the cash flow of the property for the property and analyzing the numbers to see if they make sense.

Q Okay. nd we've also used the term "origination" or "originators." Can you describe for me what an originator is?

Sure. loan originator is someone who is out looking for deals and trying to bring in new loans for the company to do.

Q Okay. nd the general responsibilities of a loan originator, I heard you just say bring in new deals, but can you drill down a little bit more on what those responsibilities are?

Yes. It's finding new business and then the client relationship is really through the originator. nd then when a loan is actually signed up, they're managing the process and making sure everything is going smoothly.

Q lmost like on the sales end of the business?

Yeah, you could say that.

Q Okay. t any point in your career, did you hold the title of an originator?
Yes.
Q When did that occur?
I was a junior originator at UBS when I was an analyst and I was able to bring in my own deals. Took a few years for that to occur, but probably 2004/2005 I started to bring in my own deals.
Q nd for how long did you serve as a junior originator? I know you said it started in 2004 at UBS.
My entire time at UBS including Dillon Read.
Q When did you leave UBS?
May of 2008.
Q You maintained the same job title that whole time between 2004 and May 2008, right?
I'm not exactly sure when I was promoted to director, but somewhere around there. Until 2008, yes.
Q Still the same originator responsibilities, though?
Originator, yes.
Q Okay, great. In 2008, remind me where did you go after that?
In October of 2008, I joined Ladder Capital.
Q Okay. ny particular reason for the gap between May 2008 and October 2008 between your job at UBS and joining Ladder Capital?

Yes. There were layoffs at UBS and across the entire industry in 2008 and I raised my hand for the next round. I just had a child and figured I would have a few months to spend with her before Ladder Capital was set up and ready to go.
Q Okay. nd any significance attached to that particular date of October 2008 when you joined Ladder Capital?
That's when Ladder Capital was started.
Q Okay. nd who started Ladder Capital?
Brian Harris is our CEO along with a few other people.
Q Who were those other individuals?
Greta Guggenheim (ph), Pamela McCormack (ph) and Robert Pearlman (ph).
Q nd did you know all four of those individuals?
Yes.
Q How did you know those four individuals?
We all worked together at UBS.
Q Is it a fair characterization that they brought you from UBS along with them to join Ladder Capital?
Yes.
Q Okay. nybody in particular bring you along with them to join the Ladder Capital group in 2008?
I mean, Greta Guggenheim is who I was a junior originator for when we were at Dillon Read, so she was probably the spearhead, but I think all of them.
Q So you reported to Greta Guggenheim at your prior

position before Ladder, fair?
Well, no, because when I went back into UBS for that one year, she had left to begin the process of starting Ladder Capital. So there was a one-year gap in there, but yes, I reported to her prior.
Q Could you remind me about the time period when you returned back to UBS when was that?
That was in 2007.
Q nd why in 2007 did you return back to UBS?
Because of the subprime crisis, we decided to shut down UBS decided to shut down Dillon Read Capital Management.
Q What was it about you in particular, if you know, was the reason you were able to return to UBS?
t the time, they gave an option to a lot of us, not everybody, and I was one of the people that was offered the opportunity to come back into UBS, so I took it.
Q Did you have any particular relationships or loans that you were working on that made it a reasonable offer to bring you back into the fold at UBS?
I'm not sure that was the reason for it. I was working on loans, but I don't think that was the reason why they brought me back in.
Q Were you organizing on any loans with an entity named or associated with the title "The Trump Organization" in or around 2007?

Yes.
Q nd was there a particular Trump Organization loan in 2007 that was included in the transactions that you worked on when you returned to UBS in 2007?
Yes.
Q Which loan was that?
That was for Trump Park venue.
Q I want to go back to just our discussion a moment ago about sizing a loan and help me as to the basics go down here. Can you give me the factors that you would include on sizing a loan?
Well, we look at a rent roll.
Q Okay.
We look at operating statements, historical, including a trailing 12 statement as well as a pro forma budget, and then we will look at pictures in the property and anything else that's pertinent to the deal.
Q Okay. nything else?
If there's a ground lease, we will look at a ground lease. We may look at leases if there are major leases that we are concerned about or we want to make sure we understand pretty well. That's most of what we'll look at.
Q What is the point of that? Why are you trying to understand those factors that you just mentioned?
When we write a loan, we're looking as if we're going

to own the property in case because we write non-recourse loans. So the bar could give us back the keys, so we look at every loan as if we're going to own the property and we want to understand how it operates and what the cash flow would look like if we took it over.

Q Is there a particular reason why is there a cost to you, to Ladder?

cost?

Q Yes.

I'm not sure I follow.

Q Well, you used the word "non-recourse." Let's start there. Can you define that term for us, please?

So non-recourse loan is where we cannot go after them personally. If something goes wrong and they default and we foreclose, we take back the property. But other than any recourse obligations that are on that particular loan, it's just the property. We can't go after them personally.

Q So you basically own the property; is that fair?

We would own the property if they fell down the loan and we took it over, yes.

THE COURT: Five-minute warning.

MS. F HERTY: Thank you, your Honor.

Q Now, we've just spoken of the word "non-recourse." Is "recourse" a term of art in the banking industry where you work?

Yes.

Q Can you describe for me what "recourse" means?

So "recourse" means that you're personally obligated to repay the loan if it is a full recourse loan. Or if there are recourse obligations, you would be personally liable for that specific obligation.

Q Can you provide an example of what it means to be personally obligated?

It means that we need to be made whole and that you're required to pay it.

Q How would you guarantee with regards to a recourse loan that the bank would be made whole again? Is there anything that you would put into place --

MS. F HERTY: I apologize, Your Honor. This is a complex question. I'll reask it.

Q How would you guarantee with regards to a recourse loan that the bank would be made whole again?

We have net worth liquidity requirements that need to stay in place throughout the term of the loan.

Q nd if they don't?

It is a default.

Q Is there an agreement that the bank signs with the borrower to ensure that those terms are in place and defined?

Yes, it is in the loan documents.

Q Okay. I want to focus your attention on your current position with Ladder Capital.

When you joined in 2008, what was your title?

Director.

Q What is your title currently?

Executive director.

Q Do you recall when -- withdrawn.

When did you receive that title to executive director?

I can't recall.

Q pproximately how long have you served as an executive director?

Five or six years, maybe.

Q So approximately five or six years you received the title executive director?

pproximately, but I'm not exactly sure.

Q Thank you for giving me the approximation.

Did you hold any other titles between that time period from when you served as a director to now with your title as executive director?

No.

Q Okay. Thank you.

s it concerns your current position as an executive director, are you an originator?

Yes.

Q How about the phrase "underwriter"? re you familiar with the term "underwriter" in the banking industry?

I am.

Q Describe for me your understanding of what an underwriter is?

Underwriter on the loan is who gathers all the diligence on every transaction, sets up the third-party reports and analyzes the numbers to decide if it is a loan that makes sense for us.

Q What purpose does that serve in the context of your work?

Every loan has to go through the underwriting process to make sure that it is a deal that works for us, and they're responsible for putting it altogether and presenting it to a committee of why a deal might make sense or not.

Q Do they assign a value to a particular deal?

No.

Q Do they -- what type of insights other than the diligence we just described -- what type of insights are they presenting to the bank?

Well, we're not a bank, but the committee on a loan, they're presenting what the numbers look like and whether it is a deal that makes sense for us.

Q nd when you say "what the numbers look like," can you anchor that? nd, for example, the collateral that's being used or the deal that you're trying to perform, describe for me what you're referencing.

They hire an appraiser to get a value. They hire an

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environmental engineer consultants to tell us about that aspect of the property and then they analyze all the numbers and they write a number according to what they think makes sense.
Q re they assessing risk?
Yes.
Q nd how do they do that?
Exactly as I just described. They'll go through the cash flows and they'll go through the market and decide what they think the assumptions are that we should use to decide if it is a risk worth taking.
Q nd have you ever served as an underwriter in any of your years since you graduated Penn State University?
Yes.
Q When did you do that?
I don't recall the exact years, but there are about five years at Ladder Capital where I was underwriting.
Q Why was that?
We were getting bigger quickly and weren't looking to hire additional under writers, so I raised my hand to take on that role and help out in the underwriting side.
THE COURT: One minute.
MS. F HERTY: One question, Your Honor.
THE COURT: Sure.
Q nd just to clarify for the five-year period when there wasn't sufficient staff and you served as an underwriter, did

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you wear both hats as an underwriter and an originator or just one?
My main priority was underwriting, but I was able to service a few of my clients that I had a good relationship with, so I did originate a few loans during that time period.
MS. F HERTY: Okay. I think now is a good time for a break, Your Honor.
THE COURT: Okay. Have a good lunch, everyone. See you at 2:15. Thank you.
(Witness exits the stand.)
(Whereupon, a luncheon recess was taken.)
F T E R N O O N S E S S I O N
* * * * *
THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Latops and cellphones will be permitted, but only to members of the public, members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Please be seated and come to order.
THE COURT: If only the witnesses would talk like that.
Tommy, you would make a good witness.
I have a statement first to make on the record.
ttorneys are not allowed to make press statements or give

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press conferences in the building no matter what time of day, okay.
Okay. Let's get the witness.
THE COURT OFFICER: Witness entering.
THE COURT: I'll remind the witness, as I always do, that he is still under oath, and let's continue with the direct examination of Jack Weisselberg.
MS. F HERTY: Thank you, Your Honor.
Q Welcome back, Mr. Weisselberg.
t the break, we talked about how you had the roles of both an originator and underwriter. I want to focus your attention on your current employer, Ladder's, practices.
Can you broadly describe the relationship of the originator and the underwriter performing work?
Sure. It is completely separate groups and the originator will discuss a new deal with the underwriters to make sure that it is a deal that could work for us. So upfront before the deal is actually signed up, we will have conversations to just go through the numbers and make sure we understand it pretty well.
fter that, once we actually sign a loan up, then underwriting takes care over with regard to diligence and getting, gathering all the information together and completing their process, and the originator is in constant contact with them. nything that they may need from the borrower, they'll

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make sure that the originator is attached since it is the originator's client technically. nd then we'll work together to get the loan fully underwritten and prepared for committee.
Q Would it be fair to say that there is a wall of separation between the originator and the underwriter?
Yes. We communicate. We work together, but at the end of the day, the underwriter's job is to underwrite the job/ loan and understand the risk and they will communicate with the originator; but it is a separate group that takes care of all the underwriting.
Q You made a reference to assisting in the diligence process. Is it the originator's role to communicate with the borrower to keep the underwriter separate from the borrower?
No, the underwriter will speak with them directly. Typically, they'll cc the originator on an e-mail to make sure they are aware of everything and the originator should be aware of all conversations that take place. Most of the time, the underwriter will speak directly with the borrower to get the information.
Q That was the general practice that you have observed in your time at Ladder, right?
Correct.
Q Can you just broadly describe to me the type of financing Ladder Capital offers?
We lend on commercial real estate. We write first

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mortgages. Sometimes we'll add mezzanine loans to a first mortgage that we write. We also do balance sheet loans that are shorter term that cover all aspects of commercial real estate.

Q nd when you say a "balance loan," what does that mean? Where does that -- where is that balance held?

balance sheet loan is a loan that we hold on our books, on Ladder's books.

Q Where else can you hold the loans that you have at Ladder Capital aside from the ones that are maintained on Ladder's own internal books?

The ones that we don't maintain, we securitize.

Q Can you describe for me what that means?

We pool together loans and sell them to the broader market in a bond offering.

Q Can we break that apart? You said "we pool together loans." Is that pull or pool together, P-O-O-L?

P-O-O-L.

Q What does that mean when you're pooling together the loans and you're selling them to the broader market? How does that look?

So we take anywhere from 30 to 50 loans, maybe less, and we put them altogether into one pool and then we sell it in tranches where somebody will buy the most senior piece and somebody will buy the most junior piece and that's what we do with fixed rate loans.

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Q nd are there -- what does it mean to be a senior loan that you pool together or a senior tranche?

The senior tranche is the most secure piece. It's the last lost piece, so that's typically set aside for people that are looking for safer bet and a lower yield.

Q How about junior? What does it mean to be a junior tranche?

The junior means the first lost piece, so if anything suffers a loss on that loan or in the pool, that's the guy that takes the hit first and he usually gets a higher yield.

Q Do you know who are the purchasers of these two types -- two tranche types of pooled securities?

I don't know specifically. The junior piece groups that this is what they do. They own --

Q Investors interested in the potentially higher risk, higher rewards?

Yes.

Q How about the senior tranche? Do you have an understanding about the types of investors in the senior tranche loans?

It's typically insurance companies or pension funds that are looking for a safer risk lower risk and lower yield.

Q When you say "pension fund," would that be something like I used to be in education. I used to be a teacher. teacher's unions?

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It could be.

Q Or we have court officers here, like a PB in some way. re those the type of pension funds that you're referring to, those types of groups?

It could be. I don't -- I don't work on the securitization side, so I am not selling the bonds, so I don't know who specifically the investors are.

Q Not impossible, but those could be the type of pension funds that would invest?

MR. KISE: Objection. Foundation.

THE COURT: Can you read back the question?

(Whereupon, the requested portion of the record was read back.)

MR. KISE: My objection is he just testified that he doesn't work on the securitization side, so I am not selling the bonds, so I don't know. So he has no foundation to answer that question.

THE COURT: Sustained.

Q But generally speaking, if I heard you correctly, but please correct me if I misheard, it would be pension fund as a potential investor, right?

It could be.

Q Thank you.

MR. KISE: Same objection.

THE COURT: Sustained. He says he doesn't know

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so...

MS. F HERTY: He offered the testimony, Your Honor, but I understand. I will withdraw.

Q re you familiar with the phrase "bad boy guaranty?

Yes.

Q What is a bad boy guaranty?

The non-recourse carve-out. So every non-recourse loan that we do, we have "bad boy carve-outs " that are intended for bad acts created by the borrower which would turn the loan into being a recourse loan.

Q What are the types of bad acts that would constitute a bad act for a bad boy guaranty?

I don't recall all of them offhand.

Q Do you know any types of bad acts that would constitute a bad act for a bad boy guaranty?

Yes. If you bring on environment waste to a property, fraud. Those are the two that I can think of off the top of my head.

Q nd does Ladder Capital have bad boy guaranties that it incorporates into the transactions it engages in?

Every non-recourse loan has them, yes.

Q t Ladder Capital?

t Ladder Capital.

Q Okay. We were talking a little bit before about how that there are balance loans that Ladder Capital might have. Is

it fair to say Ladder does in fact have short-term loans that it maintains that debt on its books?
Yes, balance sheet loans.
Q Balance sheet loans. Thank you for the correction.
nd is the answer still yes?
Yes.
Q Thank you.
THE COURT: You can't just nod your head. You have to say yes or no.
THE WITNESS: Sorry?
THE COURT: You can't just nod your head. You have to say yes or no for the reporter.
THE WITNESS: I said yes.
THE COURT: I didn't hear the answer. I just saw the head.
THE WITNESS: It's okay.
Q Do you recall how many loans you've worked on since you've been at Ladder that have involved either Donald J. Trump or an entity affiliated with the name the Trump Organization?
I believe five.
Q Five?
Yes.
Q Which ones?
We did Trump Tower. We did 40 Wall Street. We did Trump International Hotel & Tower Commercial. We did Trump

Plaza partments Commercial and then Trump Central Park South.
Q nd Trump Tower, do you recall what year that was?
I believe it was 2012.
Q How about 40 Wall? What year was that one?
That one, I believe, was 2015.
Q Trump Plaza Commercial, do you remember what year that was?
I don't recall.
Q Okay. Trump CPS or Central Park South, do you recall what year that was?
It was either 2016 or 2017. I'm not 100 percent.
Q Trump International Hotel & Tower in Chicago, do you recall when that was?
That was in New York.
Q Oh, in New York. Got it. What year was that?
I don't recall.
Q Focusing on the loan relationship you had with the Trump Organization, can you describe broadly the process for financing that Ladder provided and that's how I'm going to focus your brain on my next line of questions. I want to start with the discussions of those loan relationships. Just broadly, would you have any particular discussions with anyone for those loan relationships with the organization?
On the Trump side or on the Ladder side?
Q Trump side.

That would be my father.
Q Who is that?
llen Weisselberg.
Q nybody else at the Trump Organization that you would work with in particular at the beginning of these loan discussions?
fter my father and I discussed the deals, then typically Jeff McConney and Donna Kidder would send over diligence.
(Continued on the next page.)

Q ll right. So what would you and your father do in these initial discussions?
Depending upon the deal, I may have approached him or he may have approached me, just to discuss their current financing and what their current loan looked like to see if there is any way that we could refinance that with the new mortgage.
Q So would it be the case if they didn't have a loan with you, you would discuss with your father, if at all possible, Ladder could offer a different financing arrangement. Does that sound about accurate?
If they did or they didn't there were some loans that we had done eight or nine years prior that we had securitized, so I would call and say this loan is coming due soon, what are your plans, let's chat.
Q Got it. With regards to Jeff McConney, who is he?
Jeff McConney?
Q Yes.
He was a senior accountant, maybe the controller at the time.
Q nd the nature of your relationship with Jeff McConney and those discussions concerning the Ladder relationship?
He was more making sure that I received accurate information. So he would send over rent rolls, operating statements, and if I had questions I would give him a call and

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ask him about it.
Q So fair to say was Jeff McConney your contact to help with the diligence aspect of the loan underwriting or the finance underwriting?
I wasn't the underwriter on those loans, but in the initial conversation to size the loan it would be Jeff and Donna.
Q Okay. nd Donna Kidder, I think you mentioned her name, who is she?
I'm not sure what her role is. I know she works with accounting.
Q She works in the accounting department?
I believe.
Q Okay. nd describe for me the nature of your interactions with Ms. Kidder.
Same as Jeff, but on a more sending us the information, questions that I would typically ask to Jeff, sometimes to Donna, as well, but very similar to the relationship I had with Jeff.
Q ny particular properties or just broadly you would reach out to Ms. Kidder?
That would only be after we were discussing a particular property.
Q nd are there any particular properties for which you would have conversations with Ms. Kidder?

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I don't recall which ones specifically, but probably most of them.
Q Okay. ll right.
MS. F HERTY: Can you please pull up PX 00630? Your Honor, I'm marking for identification Plaintiff's Exhibit 630 that I'd like to show the witness, please.
THE COURT: Okay.
Q Do you have that document in front of you, Mr. Weisselberg?
Yes.
Q Looking at this document, very top message, do you recognize -- is that your e-mail address at the top there in the "to" line?
Yes.
Q nd is this an e-mail from llen Weisselberg at the Trump Organization?
Yes.
Q That's your father; right?
Yes.
Q Okay. nd in this message, it's dated 2011. I recognize Counsel might have an objection in a moment, but it states:
" s discussed, we are looking for a forward commitment in the amount of 65 million, and a term of ten years to take

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effect in ugust 2012. Thanks. Talk to you soon."
Do you see that there?
I do.
Q nd it appears that this is a forward of a message from Donna Kidder; right? m I reading that correctly?
Yes.
Q Okay.
MS. F HERTY: Your Honor, I'll tie it in, but I'd like to move this into evidence.
MR. ROBERT: Objection, Your Honor. I know we have our standing objection to statute of limitations. This is going back to 2011. By anyone's account, even the account that we disagree with the government with the statute is 2014, so I would object and say this is irrelevant and it's also barred by the statute of limitations and therefore should not come into evidence.
THE COURT: Overruled.
MS. F HERTY: Thank you.
Q Is this the type of initial outreach you would have with your father when exploring loan deals like we just discussed a moment ago?
Yes. Typically he mentioned "as discussed." We probably had phone conversations and if Donna sent me an e-mail prior to this then this was a little bit further along, but yes, this is the initial sizing time period.

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Q Okay. nd it says in the message "looking for a forward commitment in the amount of $65 million;" right?
Yes.
Q nd a term of ten years to take effect in ugust 2012; right?
Correct.
Q What is your understanding of what that message is conveying here?
He's telling us that he would like us to close the loan in ugust 2012 and being that it was October of 2011, they were looking for a forward commitment.
Q Okay. nd the subject line here, it's a forward: "TTCOML" and then "October 2011 rentroll.five-year projection?"
Do you have any understanding as to what TTCOML is a reference to?
Yes.
Q What is it?
Trump Tower Commercial.
Q Is this a discussion you're having with your father with regards to the Trump Tower commercial loan?
Correct.
Q Did you, in fact, do a loan on Trump Tower in 2012?
We did.
Q Okay. Thank you. You can put that to the side -- oh, before you do.

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If I said the phrase to you, "rate lock," do you have any understanding of what that phrase "rate lock" means?
Yes.
Q Is this e-mail a reference to a rate lock?
Well, it's in reference to a forward commitment, which would include a rate lock.
Q Okay. nd the forward commitment that's in here, can you describe for me what a rate lock would be?
rate lock is when you lock in the interest rate for your loan.
Q Got it.
MS. F HERTY: Okay. We can put that to the side, please.
Q So once you have a discussion with your father, you're exploring the potential loan deal, here it appears that you and your father were talking more of the terms.
Was there any diligence you would do in connection with those initial conversations with Mr. Weisselberg?
Well, typically I would ask for a rent roll and operating statements would be the initial conversation so we could start looking at the numbers.
Q Okay. nd why would you want a rent roll?
I'm sorry?
Q Why would you want a rent roll?
Oh, so we could understand the tenants that are in the

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building, the rent that they're paying when their lease began, when their lease expires, if they have lease termination options, things like that.
Q re you trying to understand if the property is generating income, for example?
Trying to figure out what income the property is generating.
Q Okay. nd a rent roll would give you that information; yes?
That would give us what the rent would be.
Q Okay.
Yes.
Q It would be a piece of the puzzle?
Exactly.
Q Great.
MS. F HERTY: Can you put up PX 631, please? Thank you.
Your Honor, I'd mark for identification Plaintiff's Exhibit PX-00631.
Q Mr. Weisselberg, we've put it on the screen, but it's in front of you as well. This is another e-mail between you and Mr. llen Weisselberg at the Trump Organization; right?
Yes.
Q The date on this message is October 20, 2011, the next day from the message we were just looking at?

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Yes.
Q Okay. nd in this message, the subject, "Trump Tower," Mr. Weisselberg, it's a little -- Mr. llen Weisselberg says to you, "please note the numbers reflected in the projection includes a license fee payment from the producers of The pprentice, (Reilly Worldwide) is shown as $500,000. However, the real value of the two floors is approximately" or "approx $100 PSF," per square foot "or 2,798,100 or an additional," "add'l 2,298,100 to the bottom line.
dditionally, the Trump Organization occupies approx 37,225 square feet at approximately 75 PSF, equates to an additional 2,791,875 to the bottom line as well."
Do you see that there?
Yes.
Q nd there appears to be an attachment. It's identified by -- in 001, I presume. Do you have an understanding why your father -- why Mr. Weisselberg, llen, is giving you this information about The pprentice and the square footage of the floor?
Yes. The -- with The pprentice space, as well as the Trump Organization space, there was no rent associated with the rent roll, so I probably asked what was going on with this space and why is there no rent associated with it. So we included the $500,000 that was being paid by The pprentice as a license fee and he was just suggesting that the real value is probably much

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higher if we vacated the space and found a third-party tenant.
Q Okay. So the actual value received for the particular space for The pprentice would have been 500,000 based on this message, yes?
That was what they were paying.
Q nd Mr. llen Weisselberg is providing for you additional information of what they could have received; is that correct?
Correct.
Q Okay. nd this is the type of information that your father -- Mr. llen Weisselberg and you have engaged in before to try and assess whether a deal is possible; is that right?
Correct.
Q Okay. Would information like this help you do back-of-the-envelope calculations as you're deciding whether there is a deal to be made with regards to this transaction?
Not really.
Q Have you ever performed back-of-the-envelope calculations about a potential loan deal with regards to the Trump Organization?
On my own?
Q Yes.
Sure.
Q Do you recall if you did one on Trump Tower?
I don't recall.

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Q Okay. When you yourself perform back-of-the-envelope calculations, do you incorporate cap rates into those calculations that you're doing?
Yes.
Q Do you talk cap rates with Mr. Weisselberg, Mr. llen Weisselberg?
Sure.
Q When you're discussing the various deals for the Trump Organization, have you talked about cap rates that are possible cap rates to be used on those valuations?
When we send out an application for a new loan, one of the stipulations -- excuse me -- is loan to value, so we'll try to figure out what we think the appraiser is going to come back at and put an LTV there, a loan to value number, that would make sense. So typically, we'll have those discussions.
Q What is a loan to value?
It's the percentage of the loan based on compared to the ratio to the value of the property.
Q The value of the asset?
Yes.
Q Okay, great. Thank you.
Just a broad question, has your father ever called you to discuss cap rates in the market?
I don't recall, but probably.
Q Okay. nd just broadly speaking, discuss cap rates and

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he asked you for advice on a particular real estate asset in a part of Manhattan, would you be able to provide that cap rate type information?
Not accurately.
Q So you would tell your father no, I'm not providing you a cap rate?
I may tell him what I think, but that he should probably call an appraiser.
Q Okay. Other than your conversation with Mr. llen Weisselberg broadly about possible deals with Ladder, and you reference Ms. Kidder and Mr. McConney, before a deal is consummated are you aware of other individuals at the Trump Organization to your knowledge who would speak with members of the Trump Organization -- Ladder with the members of the Trump Organization?
Sorry. Could you repeat the question?
Q Yes, that was a poorly worded question.
Other than the names we've already discussed, to your knowledge, are you aware of other members of the Trump Organization reaching out and speaking to members of Ladder Capital about a deal before the loan transaction and the financing transaction is consummated?
MR. KISE: Objection. re we talking about 2011 or anytime?
MS. F HERTY: I'm talking generally.

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Not often, but maybe once or twice.
Q What are the two examples you're thinking of?
I believe that Mr. Trump would speak to the CEO of my company, Brian Harris, occasionally before a loan closed or was signed up.
Q Can you give me an example of when that occurred?
Think with the Trump Tower loan that occurred -- it may have happened with 40 Wall, as well, but I don't recall.
Q nd what is your understanding as to why Mr. Trump would speak with Brian Harris about a loan deal with Ladder Capital?
They had a relationship that goes back many years and before a loan closes sometimes they'll have a chat.
Q Do you know the substance of those chats?
I don't.
Q Okay. You recall that Mr. Harris and Mr. Trump did speak in connection with the Trump Tower deal in 2012?
I believe so, yes.
MS. F HERTY: Can we pull up PX 649? Thank you.
nd, Your Honor, I neglected to move the prior exhibit in. I'd like to move that in subject to I'm aware Counsel have their standing objection.
MR. ROBERT: Objection.
THE COURT: Overruled. It's in.
Q Okay. Mr. Weisselberg, you've been handed a document

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that's been marked as Plaintiff's Exhibit 649. Do you recognize that e-mail address at the top in the "from" bar? Is that your e-mail address at Ladder Capital?
Yes.
Q It's dated January 8, 2012; right?
Yes.
Q Do you recognize the e-mail address sportsalley@aol.com?
Yes.
Q What is sportsalley@aol.com?
That's my father's, llen Weisselberg's, personal e-mail address.
Q It appears you're forwarding Mr. llen Weisselberg a message between you and Brian Harris; right?
Correct.
MS. F HERTY: Okay. Can we scroll down further? We're going to go to the underlying bottom e-mail.
Okay, there we go.
Q Looking at the bottom of this first page do you see on January 7, 2012, 10:50 p.m. there appears to be a message to Brian Harris. My understanding is it's from you, but the e-mail header is gone and it says, "quick FYI," dot, dot, dot, "I spoke to DT when he landed in Florida on Friday night and he was congratulating me on getting such a prize. Seems like he's done as far as he knows. Could not have been nicer to me or more

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complimentary of you."
MR. F HERTY: ctually, if we go back one message it will give us our context. Go further underneath. Sorry, shley. Further. Great.
Q Okay. message from you, do you see at the very back?
Yes.
Q To Brian Harris, Pamela McCormack, Greta Guggenheim, Michael Pasadon, Ed Peterson, Micah Goodman, and David Traitel. Those are all employees at Ladder Capital?
t the time, yes.
Q nd this appears to be a message sent on January 6th in 2012, yes?
Yes.
Q nd within the body of this message you're discussing the subject "Trump Tower." It says, "They're not ready to rate lock today." We just spoke about rate locking?
Yes.
Q nd further into the message it says, " lso, Brian, Donald may call you. Not sure if he did already. FYI, he will probably elect to take a lower loan amount if we need him to, rather than sign a lease."
re you informing Brian Harris in this message that Donald Trump was going to call him?
MR. ROBERT: Objection. It's hearsay. It's coming from an e-mail from someone that's not on the stand relaying

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something and then this witness is relaying what was said. It's not for the truth of the matter asserted. I think they're trying to establish the truth of matter asserted.
Q Did you in fact send an e-mail --
THE COURT: Wait, wait, wait. re you withdrawing that question?
MS. F HERTY: I can withdraw the question.
THE COURT: Okay.
Q Did you, in fact, send this e-mail that stated Donald may call Brian Harris?
Yes.
Q ny reason to believe you didn't send this message?
No.
Q ny reason to believe you didn't have those thoughts in your mind that Donald J. Trump might be calling Brian Harris when you sent this message?
No.
Q nd is it your understanding Donald J. Trump did in fact call Brian Harris?
That I don't recall.
MS. F HERTY: Let's scroll up further to the earlier exchange. Right there.
Q January 7, 10:50. Brian Harris writes: "I spoke to DT when he landed in Florida on Friday night."
You did in fact have an understanding that Brian Harris

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spoke with Donald Trump in Florida?
Reading this e-mail, now I do.
Q Thank you. Okay, we can move on. Thank you.
nd do you recall that as a result of that exchange you and Brian Harris were of the understanding that the Trump Tower deal was going to go ahead with Ladder?
That was our understanding.
Q Yes. Thank you.
Do you recall how you were aware that Donald Trump was going to be calling Brian Harris such that you were able to e-mail that message?
I don't recall.
Q Would Mr. Trump have informed you that he was going to be calling Brian Harris?
No.
Q Is that something you would have learned from possibly llen Weisselberg?
Probably.
Q He would have informed you of such things possibly?
Yes.
MS. F HERTY: I'm going to move on to 650. Your Honor, I'd like to move that prior exhibit in.
MR. ROBERT: I would object first on the statute of limitations; and secondly, it's hearsay.
THE COURT: Statute of limitations objection

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overruled. Hearsay objection, it's not to be -- I won't consider it for the truth of its contents, just for notice.
MS. F HERTY: Thank you, Your Honor.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 649 in evidence.)
Q Mr. Weisselberg, you testified that you were aware that in fact you did at that time know you were going to have -- secure the Trump Tower deal between Ladder and the Trump Organization; right?
We were -- the understanding was we were going to win the deal.
Q Did you have an understanding at that time that Mr. Trump was the necessary approval for that transaction to go forward?
Yes.
Q Is it your general understanding that Mr. Donald J. Trump had to approve every transaction that the Trump Organization did with Ladder?
I don't recall the smaller ones. I know on the larger ones, yes. I'm not sure about all of them.
Q Which smaller ones are you referring to?
The Trump International Hotel and Tower Commercial and the Trump Plaza Commercial.
Q So is it your testimony right now as you're sitting

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here today that you're unaware that you do not know Mr. Trump was required to approve every loan transaction?
I don't recall --
Q nd Ladder Capital?
MR. ROBERT: Objection. It's a direct examination. She is leading the witness. He's appearing here as their witness.
MS. F HERTY: I asked a question, he gave an answer. I'm clarifying his answer.
MR. ROBERT: No, that was a cross examination question.
MS. F HERTY: I'm quite good at that, too, Mr. Robert. I think it was a clarifying question for his particular answer.
THE COURT: I generally allow clarifications, so overruled, but be careful.
MS. F HERTY: Your Honor, I appreciate that.
Q Do you need that read back?
No. I think I understand it. I don't recall specifically if he had to sign off on every loan.
Q Okay.
MS. F HERTY: Can you pull up --
Q Do you recall meeting with my office previously where a member of the ttorney General, the ttorney General's Office asked you some questions, there was a court reporter there, you

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swore -- you gave an oath, gave testimony. Do you recall that occurring?
No.
Q You don't recall meeting with my office before?
Not in your office. We did it over Zoom.
Q Over Zoom, sorry. I should be clear.
Do you recall giving testimony to members of my office?
Yes.
Q nd it was sworn testimony; correct?
Yes.
Q You raised your hand, you gave an oath, you swore you would testify truthfully?
MR. ROBERT: Objection.
MS. F HERTY: I'm just following your model.
MR. ROBERT: He's their own witness in their case in chief. They can't use an alleged prior inconsistent statement which is where I think she is going, even though I don't know what it is. They can't impeach their own witness. They called them in their case as a direct witness.
MS. F HERTY: I'm going to refresh the witness's recollection. I first want to make sure --
MR. KISE: That's clearly not what she's doing, clearly.
THE COURT: I mean, I think the defendants'

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statements are generally correct.
Now, what are we doing here?
MS. F HERTY: Your Honor, I can withdraw. I can withdraw the question.
THE COURT: Okay.
MS. F HERTY: I can move on.
Q I'm going to hand up to the witness an exhibit identified as PX 650.
MS. F HERTY: Can we pull that back? I think I handed you the wrong -- thank you, Your Honor.
Q ll right. We have 650 up on the screen. You have 650 in front of you, yes?
Yes.
Q This is an e-mail between you and Greta Guggenheim dated January 10, 2012?
Yes.
Q nd I'll draw your attention to the underlying message from you to Greta at 11:27 p.m.. Do you recall -- well, I'll read it. "We should have their comments to app and rate lock agreement tomorrow, but they are skittish on a CMBS loan."
What is a CMBS loan?
It's a commercial mortgage back security, so that's a securitization loan.
Q So this is an example of a loan that has been securitized, yes?

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That's going to be securitized. That's our plan.
Q Got it. nd then it goes on: "Ivanka (with Jared Kushner's input) has made him rethink things. I tried to explain the differences BW" -- is that between?
Yes.
Q "Between a low leverage CMBS loan and a 100 percent financing CMBS loan where one overpays. He gets it, but he is deciding. He is also nervous about Gucci's rent becoming public knowledge, as he tends to embellish from time to time. nyway, they're going to negotiate the app and rate lock agreement to be ready, but are on the fence right now."
Do you recall sending that message to Greta Guggenheim on January 12, 2012?
MR. KISE: Your Honor, we've been going quite a while. I just want to raise the significant relevance objection here. This is 2012. What does this have to do with anything? re they going to tie this up somehow? These loans aren't even at issue in any shape, form or fashion in the case by anyone's view.
THE COURT: Well, you know me, I tend to give some leeway. I hope there will be a connection and, as I've said many times, the statute of limitations limits claims, not evidence.
lso, I think these -- this testimony may be relevant to the requested equitable relief, so I'm going to

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allow it for now.
MR. KISE: Let me just pause there and clarify that, Your Honor. How could conduct that's outside the statute of limitations be relevant to any relief in the case? The Court can't consider things -- then you're going to consider things from 1990, 1995, 2000, 2005? I mean, it becomes limitless at that point.
THE COURT: Well, I'm not going to set a particular time limit, but 6312 refers to a pattern and I -- the acts would now be subject to a claim, but the pattern I think who would be? We could brief that, we could discuss that.
MR. KISE: I mean, respectfully, Your Honor, I would disagree. The pattern that has to be established is a pattern within the limitations period. Otherwise, 6312 could reach back to 1985. I mean, it becomes an arbitrary limit which I think is the precise reason we have limitations periods, but if we want to take that up at a different time, that's fine. My only objection now is it's seemingly very irrelevant.
THE COURT: Well, out of an abundance of caution, I'll let her continue. Yes, it's an interesting question to what extent pre-limitations actions are -- could be encompassed with an examination of, quote, "persistent fraud." I think, again, it's the question of the claim. When you look -- I don't know. We'll have to talk about

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that. I'll allow this for now with the objection on the record.
MS. F HERTY: nd I'll try to move faster, Your Honor. I appreciate what we're all trying to get through here.
Q Just, again, turning your attention to -- I don't know if there was a question pending. I lost it.
The question was do you recall sending that message to Greta Guggenheim on January 22, 2012?
Reading it now clearly, I did, but I don't recall the e-mail.
Q Okay.
THE COURT: pparently there are cases that are -- or least a case that specifically held that examining conduct pursuant to 6312 can include pre-limitations behavior, and I can get that cite at some point. Sorry to interrupt.
MS. F HERTY: Thank you, Your Honor.
Q So in the body of this message you're referring to a CMBS loan and "they are skittish." Is it "they are skittish" a reference to the Trump Organization?
Yes.
Q nd later on you make a statement "he's also nervous about Gucci's rent becoming public knowledge. s he tends to embellish from time to time."

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What is that a reference to being nervous about Gucci's rent becoming public knowledge? Is that in any way connected to a CMBS loan?
Gucci was the major tenant at Trump Tower.
Q Okay. nd what does it mean in this message about becoming nervous to Gucci's rent becoming public knowledge?
I don't recall specifically what I was referring to in this e-mail.
Q Is there something about a CMBS loan that would make financial information like rent from a tenant in a building becoming public knowledge?
Yes.
Q nd what is that?
It's a public offering, so the documents for all large loans, usually the top ten, sometimes the top 20 are released publicly.
Q So information about rent in a building would potentially be publicly available in connection with the CMBS loan?
Correct.
Q Okay. Thank you.
MS. F HERTY: Your Honor, I move to admit this exhibit into evidence, please?
MR. ROBERT: Objection.
THE COURT: Granted. It's in.

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(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 650 in evidence.)
MS. F HERTY: Thank you. You can put that down.
Q Was that your general understanding that the Trump Organization had concerns about financial information becoming public in connection with any of the Ladder loan transactions?
MR. KISE: Objection. t what time period? I mean, anytime period?
MS. F HERTY: General understanding.
Yes, I recall it being public was a concern.
Q Was that your understanding throughout the time period that you've been working on the Trump Organization loans?
Not sure.
Transcript continues on the following page....

THE COURT: So let's agree with if there's no indication of a time period, it refers to all the time or just generally.

MR. KISE: So again, at any point without any specificity? Just okay. I think it's objectionable, but you're the judge.

THE COURT: I think commonsensically it is limited by the time period in issue which may be a long time period I grant.

Q We spoke earlier about a loan on Central Park South in or about 2017. You didn't recall the time period, right?

Correct.

Q Okay. Tell me what you recall about that particular loan?

It was a short-term balance sheet loan and they had a property that was unencumbered meaning it had no debt on it and they came to us for a loan.

Q Which property was that?

This was located at -- on Central Park South, on Sixth venue.

Q It was the property located on Central Park South, on Sixth venue?

Yes.

Q So if I say "CPS," would you agree that that's our parlance for that same property, yes?

Sure. Yes.

Q Do you recall how much that loan was for?

It was 25 million.

Q 25 million?

Yeah.

Q What is your understanding as to the need for that loan?

My understanding at the time was that they had a settlement that they needed to pay, so they took an unencumbered asset and we gave them 25 million for it.

Q You said it was a short-term loan. How long was the term of that loan?

12 months.

Q 12 months?

Yes.

Q What is your understanding as to why it was a short-term loan?

t the time, they were waiting for two apartment units to sell at another property and they thought they would have closed in time for the settlement and when they realized it could not or may not work, they just came to us us. So they knew those two units were going to sell shortly, so they needed a short-term bridge loan.

Q When you say "short-term bridge loan," is that to free up cash?

It was to provide cash.

Q Provide cash, okay.

Did you say what settlement that was for?

I did not say.

Q Do you have any understanding as to what settlement that money was going towards?

I believe it was Trump University.

Q Thank you.

Did you have any understanding at this time that there were cash issues related to their liquidity?

The understanding that we had was that they had recourse obligations to another lender that limited the amount of cash that they could access. They had to maintain a liquidity requirement and so that was the main thing that was holding them up as well as these two units that had not sold yet.

Q Do you recall who that lender was?

I believe it was Deutsche Bank.

Q What specifically was the cash issue at Deutsche Bank that you understood?

s I just mentioned they had a liquidity requirement with debt that they had with them meaning they had to maintain a certain liquidity level. I never knew what that number was, but if they had dipped into cash there was a chance that they could triplex a default on that loan and that they didn't want to do

that.

Q So in order to get the bridge loan, they avoided triggering a default on their liquidity requirement at that time?

MR. ROBERT: Objection. It is another one of the leading questions that they want to have a summary of something. They can ask a non-leading question and get an answer, Your Honor.

THE COURT: Rephrase it, so that there's no issue about whether it's leading or not.

MS. F HERTY: I was just rephrasing his words. So I can withdraw, Your Honor.

THE COURT: Okay.

MS. F HERTY: I think the point is made. Thank you.

THE COURT: Withdrawn.

Q Let's turn your attention to 40 Wall Street and that loan transaction, please.

Okay.

Q Do you recall how that loan came to you?

I don't recall if I approached my father, if he approached me, but we had a conversation.

Q So you don't know who brought it to whom, but there was a conversation between you and Mr. llen Weisselberg; fair to say?

Correct.
Q Do you remember what broadly those initial discussions entailed?
We had discussed the current loan that they had and the maturity date and certain dates that were in important on that loan and, you know, I mentioned that I think we could provide a loan here.
Q Did you have an understanding at that time what that "then current loan" was that you were discussing?
Yes. They had a loan with Capital One.
Q What do you recall about the particulars of that Capital One loan that prompted the discussion with Mr. llen Weisselberg about what, if any, financing or refinancing Ladder could provide?
The loan they had at Capital One had a unique feature of amortization paydown of $5 million and we were -- they wanted to decide whether it was better for them to just make that payment and stay with their current loan or maybe get a new loan with a lower rate.
Q Did you discuss the ground lease at all with regards to 40 Wall in those initial conversations?
I don't think initially.
Q re you aware that there is a ground lease?
Eventually we got there, yes.
Q What do you know about the ground lease at 40 Wall?

The ground lease was owned by a third party, I believe it was a family in Germany, and there was a rent reset that comes due in, I believe, 2032 and it is based on the fair market value of the ground lease and six percent of that would be the payment. So we knew that the current ground rent that had contractual increases until then would go up to a number that we couldn't determine for sure at the time of the loan.
Q nd sorry. I should ask this clarifying question.
Does the Trump Organization or Mr. Donald J. Trump own 40 Wall in fee simple?
It's a lease fee.
Q nd it is this ground lease that controls that ownership arrangement?
Correct. They own the building and somebody else owns the dirt.
Q Thank you.
Do you remember the initial general terms that you and Mr. llen Weisselberg were initially discussing when you first contemplated a re-fi of the Capital One loan with Ladder?
We were talking about a ten-year CMBS loan. I believe it was 160 million. That's all that I recall in the initial conversations.
Q Do you recall possibly discussing the rating if you had securitized the loan, what those ratings might be?
Initially, no. But eventually, yes.

Q Do you recall looking at any initial projections with regards to that initial discussion?
Yes.
Q What projections do you recall looking at?
I don't recall the specifics, but typically we would receive a rent roll and operating statements.
MS. F HERTY: Let's pull up 1290. Did we keep it or did you give it back to me? No. You gave it back to me. Thank you.
Your Honor, I marked for identification Plaintiff's Exhibit PX-10290.
Q I put that on your screen in front of you as well, Mr. Weisselberg. ppears to be a message from llen Weisselberg, your father, right?
Yes.
Q To you on pril 9, 2015, yes?
Yes.
Q nd this is a forward with the subject Trump Mar31, 2015, March 31, 2015, yes?
Yes.
Q "Derivatives valuation report from Chatham Financial." Do you see that there?
I do.
Q nd there is an attachment with a title "Trump31-Mar-2015valuation.xls". Do you see it?

Yes.
Q This is your father forwarding you a message from Chatham Financial, correct?
Correct.
Q Who is Chatham Financial?
Chatham Financial is a third-party provider that borrowers and lenders use for a few different devices. One is to buy rate caps and in this case to figure out what prepayment penalty would cost.
Q nd what is the point of sending this message regarding what a prepayment penalty might be?
So when we -- when they were deciding when the Trump Organization was deciding whether to make the amortization payment or to get a new loan, the process of getting a new loan, they would have to make a prepayment penalty to Capital One. So they hired Chatham to find out what that prepayment penalty would look like.
Q nd this is just Mr. Weisselberg llan forwarding it to you, so that you could have a further discussion about it, yes?
Correct.
THE COURT: Five-minute warning.
MS. F HERTY: Your Honor, I move to admit this into evidence.
MR. ROBERT: Objection. Statute of limitations and also I'm not sure if there is an attachment because there is

a second document that says "document provided natively" and whatever is coming from valuation reports would be hearsay.

MS. F HERTY: I'm not putting it in for the truth of the matter asserted. I'm putting it in for notice that this was information the Trump Organization had and forwarded to Mr. Jack Weisselberg.

THE COURT: Okay. Statute of limitations overruled and hearsay. Granted except to the extent that it is being introduced to prove notice.

MS. F HERTY: Your Honor, I can have our consultant put the street which is the attachment to this document on the screen.

THE COURT: Let's see that.

MS. F HERTY: So we can see it.

THE COURT: Granted. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1290.)

Q Do you recognize that this is the Excel spreadsheet? It says, "Chatham Financial" here?

It says "Chatham Financial," yes.

Q ny reason to believe that this is not the attachment that was included to this message?

No.

Q Okay.

MS. F HERTY: Your Honor, I move to admit subject

to all of the objections I imagine.

THE COURT: It is in.

MS. F HERTY: Thank you.

THE COURT: Including the attachment.

MR. ROBERT: It is for notice only correct.

THE COURT: Yes.

MS. F HERTY: Yes. Probably a good moment for a break at this point, Your Honor.

THE COURT: Okay. 15 minutes. We'll take a 10-minute-break.

(Witness exits the stand.)

(Whereupon, a recess was taken.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT OFFICER: Witness entering.

THE COURT: So let's continue with the direct examination of Mr. Jack Weisselberg.

MS. F HERTY: Thank you, Your Honor.

Q Mr. Weisselberg, during your discussions of the 40 Wall loan transaction, do you recall there came a point in time when you discussed with Jeff McConney information related to the ground lease?

Yes.

Q Do you recall at any point reviewing formal, potentially legal documents?

I remember we reviewed the actual ground lease.

MS. F HERTY: Your Honor, I marked for identification the plaintiff's next Exhibit PX-00635.

Q I put it on the screen, Mr. Weisselberg, plaintiff's exhibit. Does this appear to be a message from Jeff McConney at the Trump Organization to you on pril 10, 2015?

Yes.

Q Is there also a copy on this message to llen Weisselberg at the Trump Organization?

Yes.

Q The subject is "forward:40 Wall Street ground lease" and there appears to be an attachment, yes?

Yes.

Q The attachment is 20 -- well, I don't have to represent to you. It is on the screen. "20100720103907533.tif," do you see that?

Yes.

Q In this message, Jeff McConney appears to be writing you, "Jack, attached is the 4th loan modification along with summary which talk about how to compute the FMV rent a few years from now." Then it looks like there is an emoticon smiley face, right?

Yes.

Q What is FMV rent?

Fair market value rent.

Q Okay. nd did you have any understanding as to what a 4th loan modification along with a summary was?

It was actually a typo. It is 4th lease modification.

Q 4th lease modification, okay.

Did you understand that this message about 4th lease modification related to the 40 Wall Street ground lease?

Yes.

Q nd then I'll ask you to turn to the next page in your document in front of you, plaintiff's exhibit. Do you recognize that page right there?

Yes.

Q What do you recognize that to be?

This is the fourth amendment to the ground lease discussing the rent reset.

Q nd this is a document you reviewed that Jeff McConney sent to you with regards to the 40 Wall Street?

I perused it, but the underwriting team reviewed it.

MS. F HERTY: Your Honor, I move this exhibit into evidence.

MR. ROBERT: Objection.

THE COURT: On the ground?

MR. ROBERT: Statute of limitations.

THE COURT: Overruled.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 635.)

Q Turning your attention to this summary page, you agree with me there is a note under the title, "Resume of 4th Modification of Ground Lease on 40 Wall Street New York City"?
Yes.
Q The note says, "This resume represents a brief summary of any of the important provisions of the 4th modification of the lease," yes?
Yes.
Q nd the date of the loan modification -- the lease modification appears is December 31, 2007?
Correct.
Q The landlord is identified?
Yes.
Q Is the tenant identified?
Yes.
Q The tenant is 40 Wall Street, L.L.C.?
Yes.
Q Do you recognize that tenant, 40 Wall Street, L.L.C.?
Yes.
Q Who do you recognize 40 Wall Street, L.L.C. to be?
That was the owner of the building.
Q Is the 40 Wall Street, L.L.C. affiliated with the Trump Organization?
Yes.
Q Do you see further down on the page there is a topic

header, "Provisions of the Fourth Modification"?
Y88es.
Q Do you see at point two, it says, "Revised Section 2.05 to provide for rent valuation as of January 1, 2033 at the greater of a, six percent the then value of the land considered as vacant and unimproved, but with the right to construct a 900,000 square-foot building for X, office purposes, and Y, ground floor retail space or other retail space in the building which existed after January 1, 2028 or B, 85 percent" -- it says "O", but would it be a fair interpretation that it should be "of"?
I believe so.
Q "The then rental." Do you see that?
Yes.
Q Was this provision relevant to you in the underwriting of the 40 Wall transaction?
Yes.
Q Turn to the next page. Do you see that second provision there that says, "condominium conversion right"?
Yes.
Q "Paragraph four eliminates the tenant's condominium conversion rights which it had under Section 27.09." Do you see that there?
Yes.
MS. F HERTY: If we move to -- it is identified as

five at the bottom of the page, you will see it as numbered paragraph five, right there. Back one. Thank you.
Q Do you see that paragraph five was included in there?
Yes.
Q Which states, "In consideration of the elimination of Section 27.09 of the lease, landlord and tenant agree that if in the future tenant is of the opinion that the area and times favor the construction of residential units which may be condominium units and tenant desires to create a residential condominium for the sale of units to the public, tenant may propose revision of the lease to permit the conversion to condominium ownership for the sale of such residential units provided, however, that in no event shall landlord have any obligation to agree with or take any action to effectuate such condominium conversion and landlord's determination to permit any such conversion shall be at landlord's sole and unfettered discretion." That was included in this document, yes?
Yes.
Q Then one more page forward, do you recognize the -- the signature at the very bottom of this document?
Yes.
Q Whose signature do you recognize that to be?
That's Donald J. Trump's.
Q Donald J. Trump, the man sitting over at that table there?

No.
Q He was there, right?
t some point.
Q That signature for Donald J. Trump is associated with 40 Wall Street, L.L.C., yes?
Yes.
Q Okay. We can put that down. I handed up to you a document marked as Plaintiff's Exhibit P X-01109. Let me know when you see that in front of you.
Yeah.
Q I'm going to ignore a lot of the bottom of this e-mail --
Thank you.
Q -- because I think it is just irrelevant, personal information, personal communications, but looking at the message from you to llen Weisselberg dated pril 16, 2015 at 10:29 a.m., that's you e-mailing your father, Mr. llen Weisselberg, yes?
Correct.
Q nd then you have -- he responds to you, "Not too shabby. Let's get the rate and answer on the ground lease, so we could move the process," yes?
Yes.
Q nd then further up in the chain, you inform Mr. llen Weisselberg that you're "sitting down tomorrow with our head of

large loans and then probably Brian and Mazzei on Monday," yes?
Yes.
MS. F HERTY: For the court reporter, that's M- -Z-Z-E-I.
Q The Brian referenced here, who is that?
That's Brian Harris.
Q Mr. Mazzei or Mrs. Mazzei referenced here, who is that?
That's Mike Mazzei.
Q There is reference here to the head of large loans. Who was that?
I don't know exactly. I'm not sure. We actually had a head of large loans. It was probably David Henschke who was our head of securitization.
Q Thank you. So possibly discussing the securitization of the 40 Wall Street loan? Is that what that's a reference to?
Yes.
Q Okay. nd the reference in the underlying message from llen Weisselberg, "Let's get the rate and the answer on the ground lease." What is that a reference to, to your understanding?
With the rate, we wanted to know what their interest rate would be based on the cash-free loan and our understanding of the loan. nd the answer on the ground lease is making sure it was financeable, securitizeable and figuring out what we thought the rent was going to be when it reset.

Q nd can you talk a little bit more about that, why would that be a concern?
Well, the ground lease is part of the operating expenses for the property, so it affected the net cash flow and in this case as I had mentioned earlier, the ground lease was resetting to a number that we thought would be much higher. So it was important to figure out what we figured it would be 17 or 18 years later.
Q Does that mean 40 Wall Street, L.L.C. once the ground lease reset would potentially have higher rent exposure that it would have to pay at the time of that reset; is that right?
The ground rent could potentially be higher, yes.
Q nd that was a concern to you for what reason?
It would affect the net cash flow and our loan dollars are based on the net cash flow of the property.
Q Would it also impact the loan beyond the current contemplated financing project?
It would only affect that, but because of that, it affects our loan.
Q Understood. Thank you. You could put that to the side.
Just to clarify as well, does that ground lease reset also impact the rating agency's LTVs?
Yes.
Q In what way?

The rating agency comes up with their own value which leads to the loan to value based on the rating agency cash flow and that cash flow includes what the ground rent payment will be.
(Continued on the next page.)

Q nd you can put that down. Thank you, sir.
MS. F HERTY: Did I move that into evidence, Your Honor? If not, I am so moving.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Understood.
MS. F HERTY: Thank you, sir.
Q Okay. Mr. Weisselberg, I've handed up to you a document that we've marked as Plaintiff's Exhibit PX-00647 and putting it on the screen here appearing to an e-mail from you on pril 23, 2015 to Brian Harris.
nd would you agree with me this appears to be another group of individuals who all work at Ladder Capital at that time?
Yes.
Q nd the subject is 40 Wall Street?
Correct.
Q nd looking at the names included on the cc line, do you have any understanding as to who that group of individuals includes?
Yes.
Q Who are they?
Craig Robertson was the underwriter on the deal, Mike Mazzei was our president at the time. David Henschke was our head of securitization, Ed Peterson was our head trader, Greta Guggenheim was our CIO at that time, Pamela McCormack was our

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general counsel at that time, and Matthew Jacobs was our head of CMBS underwriting at that time.

Q nd this grouping of individuals, are they a particular group at Ladder? Would there be a reason for writing to this group?

I believe that most of them made up the committee that would approve the loan, not all of them.

Q nd is there a name for that committee?

For this one it would be Conduit Committee.

Q Conduit?

Conduit.

Q Okay, great. Thank you.

So in this message, and you don't have any reason to doubt this, is a message authored by you; correct?

Correct.

MS. F HERTY: Your Honor, I'm going to ask questions about this, so I want to avoid missing it. Move to admit this document.

MR. ROBERT: Objection. Statute of limitations.

THE COURT: Overruled. It's in evidence.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 647 in evidence.)

MS. F HERTY: Thank you, Your Honor.

Q So turning your attention to the first paragraph,

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Mr. Weisselberg. You mentioned how you're going to discuss the 40 Wall Street transaction for Trump.

"We sat down today to discuss the 40 Wall Street transaction for Trump. The proposed loan of $160 million (137 dollars per SF" or square foot, "excluding the ground lease, $369 dollars per square foot, including the ground lease) with a real LTV of approximately 35 to 40 percent and a DSCR of 2.32X at closing and a debt yield of 14.02 percent at closing, will take out the current $160 million seven-year IO loan that they currently have with Capital One."

So is this what we talked about earlier, the financial arrangement that the Trump Organization currently had in place that Mr. llen Weisselberg was seeking to refinance with Ladder?

Last part of that sentence, yes.

Q Sure. nd DSCR, what does DSCR stand for?

That's debt service coverage ratio.

Q What is a debt service coverage ratio?

That is when you take a loan constant which is using the interest rate and the amortization schedule and you divide it by the net cash flow of the property to figure out what the coverage is, meaning how much cash flow there is from the property to pay the debt service.

Q nd IO, what is IO?

Interest only.

Q Okay. ll right. nd it goes on further to state the

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loan has acquired $5 million amortization payment in November of 2015, right?

Yes.

Q nd the reference to that loan, am I reading it correctly, is it your understanding that that loan is a reference to the Capital One loan, yes?

Correct.

Q Okay. The sentence continues, "alternatively for Trump they can make that same $5 million payment to break the (swap prepayment penalty,) which would be a tax deductible payment. So a new loan would reduce his rate from 5.71 percent to a low to mid 3's rate, extend his loan for ten years and allow him to recover his prepayment penalty in a little more than one year. Of note, he will be coming out of pocket for the prepayment penalty."

What is that reference to, that grouping of sentences I just read, the "alternatively for Trump?"

So this was mentioning why our loan would make sense for them and that if they decided not to make the amortization payment to Capital One and keep that loan outstanding that they would come to us for a new loan and this would be the alternative where they would lower their rate and the prepayment penalty they would be able to recover that just in saving on debt service over what I said was a little more than a year.

Q nd do you recall -- how did you form that

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understanding about what alternatives that they had that they were exploring?

We did a pre-sizing, sort of underwriting to figure out what the loan payment would be assuming our rate was in the low-to mid-three percent and figured out how long it would take them to recover that prepayment penalty.

Q Got it. nd the e-mail goes on. The next paragraph begins, "the rub on the deal is the ground lease." What did you mean by that?

Every deal that we do has a risk, if not more, and in this situation the biggest risk or something that made it unique was the ground lease reset.

Q For all the reasons we are just discussing a moment ago, yes?

Correct.

Q Great. nd the very end of that paragraph it begins with the sentence "we can get into the details if you want to call, if you would like, but we have gotten comfortable with that risk and David and Craig believe we can get a BBB rating on the loan with the majority of the rating agencies."

What is that a reference to, the BBB rating with the majority of the rating agencies?

So that would be a triple B rating, which is investment grade. So we would be just letting him know that we thought that our worst case would be having the lowest end of an

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investment grade loan which would be a triple B rating and the agencies that we use at the time I believe were Standard & Poor's and Fitch. So we did an analysis of how we thought they would look at our cash flow and we were able to back into at worst case a triple B.

Q So still contemplating whether you could securitize the loan and if so, what it would look like?

Well, we knew we could securitize the loan. It was a question of whether we could get investment grade treating and this was saying we believe that we would.

Q Great, thank you.

nd then you state "please let us know your thoughts or if you would like to have a conversation later today. I was planning on sending them a one-page term sheet after we finalize our quote and we could go from there."

Is it a fair reading that at this point you were prepared to issue a term sheet on the 40 Wall Street loan but had not yet done it?

We were preparing but we needed Brian sign off before we did that. So this was the initial e-mail to let him know how we felt and if he wanted to have a discussion about it, then we could discuss it and we were hoping to be able to issue a term sheet.

Q Do you recall if there was any further discussion after this message?

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I'm sure there was.

Q Okay. You can put that to the side.

MS. F HERTY: Okay. I've marked for identification plaintiff's next exhibit, PX-00648. I put it on the screen as well. nd I'll turn your attention to very bottom second page of this e-mail. You can zoom out a little bit.

You mean the top? The top of the second page?

Q I'm just drawing your attention to the bottom message on that second page and I'll just ask does this look like the message we were just looking at a moment ago?

Yes.

Q Yes, okay.

Yes.

MS. F HERTY: So zooming out from there and you can now go to the front page.

Q Does this e-mail thread appear to be a continuation of overview you were providing to Brian Harris in order to be able to issue the term sheet on the 40 Wall Street loan?

Yes.

Q Okay. nd Mr. Harris did in fact have some questions, yes?

He said okay with me. nd then he just mentioned that he thinks that they're going to want to rate lock.

Q But otherwise you -- Mr. Harris indicated to you it would be okay for you to issue the term sheet, yes?

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Yes.

Q Okay. nd very top message of this thread is an e-mail from Mike Mazzei to you, yes?

Yes.

Q nd Brian Harris, yes?

I don't believe he was on this e-mail -- oh, yes, he's cc'd. pologies. Yes, yes.

Q nd he says "did we possibly get something done today. Okie doke;" right?

Yes.

Q Okay. Looking at your message, the one right below the okeydoke, you wrote a message to Michael Harris and Michael Mazzei at 4:54 p.m., same day, pril 23rd. Do you see that there?

Yes.

Q In that message you write, "Okay, they would prefer to close in July instead of November."

Is that a reference to the Trump Organization?

Correct.

Q Do you recall as you sit here today that the Trump Organization was interested in closing the 40 Wall Street transaction in July instead of November?

I don't. I recall reading the e-mail, but I don't recall that part of this.

Q ny reason to doubt that at the time that you wrote

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this e-mail that that was your understanding?

No.

Q nd your message continues, " nd not increase the spread by ten BPS" or BPS, right?

Basis points, yes.

Q Basis points, yes. Thank you.

"In July, their prepayment penalty is 6 million as opposed to 5 million in November, so we quoted 161 million, giving them the difference in loan proceeds;" right? You wrote that?

Yes.

Q nd then next it says, "Donald is on board and ready to go." Is that Donald J. Trump?

Yes.

Q nd then it says, "Ivanka and Don, Jr. are back on Monday and will be notified then."

Who is the Ivanka referenced here?

Donald J. Trump's daughter.

Q Is that Ivanka Trump?

Yes.

Q nd the Don, Jr. Who is that a reference to?

That's Donald Trump, Jr., Donald's son.

Q So this statement, "Ivanka and Don, Jr. are back on Monday and will be notified then," is that a reference to Ivanka and Don, Jr. will be notify of the information contained in this

particular paragraph here about the 40 Wall transaction?
I don't recall specifically, but reading it, that's the assumption I would make, but I'm not sure.
Q You don't have any reason to doubt the words that you wrote that these individuals will be notified then, do you?
No.
MS. F HERTY: Okay. We can move on from that document, Your Honor. Thank you.
Your Honor, I move to admit, please.
THE COURT: It's in.
MS. F HERTY: Thank you, Your Honor.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 648 in evidence.)
MR. ROBERT: I just want my objection on the record.
THE COURT: My only objection is the pronunciation of o-k-i-e.
I can't vouch for the spelling, but the expression.
MS. F HERTY: I do say okeydoke.
THE COURT: Where are you from?
Q I've marked as Plaintiff's next exhibit PX-00626 and handed it forward to the witness, so I'll give you a minute.
We put it on the screen, Mr. Weisselberg. Let me know when you see it there.

Yes, got it.
Q Okay. Do you recognize this document on the screen?
Yes.
Q What do you recognize it this to be?
This was the cover letter to the signed application I believe for the 40 Wall Street loan.
Q nd this document is on 40 Wall Street LLC letterhead, yes?
Correct.
Q Did you have an understanding that the address for 40 Wall Street LLC was at 725 Fifth venue, the 26th floor in New York, New York with the ZIP code 10022?
Yes.
Q nd the name associated with 40 Wall Street LLC, is that llen Weisselberg as the executive vice president?
Correct.
Q nd it's addressed to Ladder Capital Finance LLC. That's where you work; right?
Correct.
Q nd the message is a proposed 161 million refinancing of 40 Wall Street, New York, New York, yes?
Correct.
Q nd Mr. llen Weisselberg writes to you:
"Dear, Jack. Enclosed please find the term sheet for the above-referenced loan executed by the borrower."

Is it your understanding that the borrower was 40 Wall Street LLC?
Correct.
Q Mr. Weisselberg's letter continues:
"Please be reminded that as we agreed, the lender will not incur any third-party fees and expenses until I advise you to go ahead with third-party reports." Do you see that there?
Yes.
Q What is your understanding of that sentence "to not incur any third-party fees and expenses until I advise you to go ahead with third-party reports?"
Oftentimes a sponsor will sign an application and have us get started on our underwriting but not incur legal fees or hiring an appraiser or other third-party reports until they give us the go ahead.
Q Okay. nd did you say appraisal fees?
Yes.
Q So basically don't hire an appraiser to do anything until I say it's okay?
Correct.
Q Got it. nd it's signed, "very truly yours." Do you recognize the signature?
I do.
Q Whose signature is that?
llen Weisselberg.

Q nd at the very bottom it says there is an enclosure, yes?
Yes.
MS. F HERTY: nd turn the page.
Q nd then I'll just invite you to confirm whether you recognize the enclosure attached to this letter?
Yes.
Q What do you recognize this enclosure to be?
This is our standard form application that was personalized to this transaction.
Q Okay. Is that also referred to as a term sheet?
Yes.
Q Okay.
MS. F HERTY: Your Honor, I move to admit this into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 626 in evidence.)
Q nd turning your attention to the PDF page six?
MS. F HERTY: It's 9517.
Q Do you recognize the signature at the bottom of that page?
Yes.

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Q Who do you recognize that signature to be?
That's Donald J. Trump.
Q Okay. nd Donald J. Trump on behalf of 40 Wall Street LLC?
Correct.
Q s president?
Yes.
Q nd I'll draw your attention to the prior page, so ending in the number 9516, drawing your attention to the paragraph that is titled "Reserves." Do you see that there?
Yes.
Q nd was a term included within this term sheet under the "Reserves" paragraph that "the borrower will be required to establish at closing reserves for material, deferred maintenance and initial deposits into tax reserves. In addition, ongoing reserves will be collected for taxes and such other purposes as lender may be determine" -- "may determine to be necessary as a result of its due diligence review and underwriting.
In lieu of reserves for insurance, tenant improvements, leasing commissions, capital expenditures and ground lease payments, Donald J. Trump may provide a personal guaranty.
In lieu of reserves for free rent periods (at closing only), Donald J. Trump will guaranty all outstanding free rent, which will burn off on a lease by lease basis when the respective tenant begins to pay full, unabated rent."

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Do you see that there?
Yes.
Q Did you also have that understanding that as termed within this term sheet that Donald J. Trump was going to provide a personal guaranty with regards to free rent periods?
Yes.
Q nd was he also going to provide a personal guaranty in lieu of reserves for insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments?
Yes.
Q I'll just turn your attention to the Exhibit , Closing Conditions document page.
Okay.
Q nd drawing your attention to paragraph 8. I'll read it and then I'll ask you a question.
Paragraph 8 states: " s a closing condition, the delivery of financial statements (including tax returns) from borrower and any guarantor, WeiserMazars LLP, will be acceptable to lender in connection with any accounting or reporting obligation in the loan documents requiring an acceptable accounting firm. The loan documents will provide that borrower's annual financial statement shall be audited by an acceptable accounting firm (i.e., WeiserMazars LLP.)" 4.
Do you see that there?
Yes.

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Q nd were they in fact a condition included in this term sheet at Exhibit 8 that the delivery of financial statements was apart of a closing condition? That's a bad question.
Yes.
MS. F HERTY: Thank you. Okay. We can move on from that document.
Q With regards to the guaranty is it fair to say based on what we were just looking at in that term sheet that the guaranty would be sufficient in lieu of reserves?
Yes.
Q ny conditions on that guaranty? Was there requirements about a certain amount of that guaranty for the -- that to be in lieu of the reserves?
The guaranty was going to be a specific number that they were guaranteeing.
Q nd why is that?
We were going to during diligence figure out exactly what those reserves would have been had it not been guaranteed and actually posted and have him guarantee that and typically we go a little bit higher because cash is always better than a guaranty, so the guaranty we typically make a little bit higher.
Q Great. Thank you. ppreciate that.
MS. F HERTY: Your Honor, I've marked as plaintiff's next exhibit PX-01396. I've handed it up to the witness.

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Q Mr. Weisselberg, let me know when you have it in front of you.
I do.
Q Okay. Does this appear to be an e-mail from you dated May 19, 2015 at 11:46 a.m. to llen Weisselberg and David Cohen?
Yes.
Q nd there is a copy to several names on this e-mail. Mark bleman. Who is Mark bleman?
He was our in-house transaction manager.
Q He worked at Ladder?
t Ladder, correct.
Q Craig Robertson. We heard his name earlier. He was an underwriter at Ladder?
Correct.
Q Was he the specific underwriter at the 40 Wall transaction?
He was the underwriter on the loan.
Q Michael Bette. Who is that?
He was the junior underwriter on the loan.
Q Scott Weinberg?
He was our outside counsel.
Q John Bauco?
Bauco, yes. He was also outside counsel.
Q nd Sarah S. Gochberg?
Sarah is our closer on the loan.

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Q nd the subject is 40 Wall; right?
Correct.
Q nd David Cohen. Is David Cohen somebody who works for Ladder Capital?
No, he works for the Trump Organization.
Q nd what is your understanding of who David Cohen is at the Trump Organization?
He was in-house counsel.
Q nd your message to llen and David Cohen, it reads: " llen/David, please confirm the following: One, at closing, Trump Corporation or an affiliate would sign a 15-year master lease for the currently vacant 20,000 square foot retail space at a rent of 1.4 million in the event that a lease with Balducci or an acceptable replacement tenant has not been signed.
Upon the execution of the Balducci (or replacement) lease, the master lease will be terminated" -- "will terminated." You would agree with me there probably is a typo there?
There is a couple typos there.
Q I'm trying.
" dditionally, Donald J. Trump will personally guarantee the lease until a new lease is signed."
Do you see that there?
Yes.

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Q Okay. What is a 15-year master lease for the vacant 20,000 square feet retail space?
So a master lease is something we will use with sponsors if a lease is not signed yet for a vacant space, we will have the sponsor sign a master lease for that so that we can include that rent and as soon as the tenant actually takes the space and signs the lease, then that master lease will go away. nd if it doesn't, then the master lease stays in place for the life of the loan. nd in this case, five years beyond.
Q nd explain to me what's a master lease.
master lease is when a sponsor signs a lease for a vacant space at their property.
Q So they're undertaking the obligation to make the payments on that space, is that fair?
Correct.
Q Okay. nd is this e-mail a reflection that on May 19, 2015, Ladder Capital, including you, had an understanding that Balducci was potentially going to be leasing the 20,000 square feet retail space referenced here?
Potentially, yes.
Q Okay. nd then there is a reference to a personal guaranty for the lease. Is that different than the master lease itself?
The master lease is not always guaranteed. They'll sign it and they'll be obligated to make those payments. We

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went a step further and made them personally guarantee that he would pay the rent on that lease.
Q Got it. Thank you.
nd then Point 2, it says: "You will send an additional good-faith deposit of $75,000;" right?
Yes.
Q Do you recall if you did in fact receive that $75,000?
I don't recall if we received it, but typically when the legal bill starts to go above the deposit we have we ask sponsors to put up more money to make sure we can cover it, so I assume they did pay it, but I don't recall.
Q nd then number three you asked that they confirm that "we have your permission to move forward, without restriction, towards the closing of the loan (legal searches, insurance, etc.)" Do you see that there?
Yes.
Q nd why did you need that confirmation for permission to move forward without restriction toward the closing of the loan?
This was in response to the cover letter on the application that was signed that told us to wait on spending any money until a certain point and we were confirming we were going to hire lawyers now, we'll need money.
Q nd maybe appraisers, too?
It doesn't mention it parenthetically here, but I would

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assume.
Q Okay. nd then you write: "Please reply to this e-mail with your confirmation that we are all on the same page and will move towards a July 2, 2015 closing." You see that there?
Yes.
Q Was it your understanding that you were moving towards a July 2, 2015 closing for the 40 Wall transaction?
t that time, yes.
Q Do you see that black Sharpie notation in the middle section of the page towards the right side?
Yes.
Q Do you recognize that black Sharpie marking?
I do not.
Q Did you write "okay" on this document?
No. This -- I actually never saw this document prior to prep because this was llen Weisselberg's e-mail that was printed, so I would have received a response to this with approval. That looks like it's an internal approval from the Trump side.
Q nd I'll just ask you to turn to the second page of this document.
Okay.
Q nd reference you into the middle of this document. This appears to be a wire transfer for about $75,000; right?

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Yes.

Transcript continues on the following page....

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Q nd the originator info for it is 40 Wall Street L.L.C., correct?

Yes.

Q No reason to doubt that you did, in fact, receive your $75,000 good-faith deposit, right?

Correct.

Q nd no reason to doubt that this document does -- was, in fact, confirmed to you at some subsequent point, right? This wire confirmation?

Q That you received the confirmation on the first cover page.

Yes, no reason to doubt.

Q Okay. We can put that to the side. Thank you.

MS. F HERTY: Your Honor, I move to admit the prior exhibit, that exhibit.

MR. SU REZ: Objection. Statute of limitations.

THE COURT: Overruled. It is in.

MS. F HERTY: PX 1396.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1396.)

Q Mr. Weisselberg, are you aware that in connection with the 40 Wall transaction, you did, in fact, receive financials?

Yes.

Q Can you describe broadly the form of the financials you received in connection with the loan transaction?

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re you referring to the operating statement financials for the property or personal financials?

Q Personal financials.

It came in hard copy. It was not e-mailed to us.

Q Did it include a cover page that had a title, "Statement of Financial Condition"?

I couldn't recall.

Q If I showed you an example of a Statement of Financial Condition for Donald J. Trump, would you -- do you think you would recognize it as something you've seen before?

Possibly. It's been a while.

Q You made reference to receiving the personal financials and hard copy. Can you describe for me a little bit more about that?

For a few of the transactions, if not all, they would messenger over the personal tax returns for Donald J. Trump as well as his personal financial statement.

MS. F HERTY: Your Honor, I've marked as plaintiff's next exhibit PX-01059. I will just put it on the screen.

Q Mr. Weisselberg, drawing your attention, this is an e-mail from Jeff McConney. He is from the Trump Organization, right?

Correct.

Q He provided you information, if you requested it,

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certain information from the Trump Organization, right? You said that before?

Correct.

Q nd dated May 22, 2014 to you. That's your e-mail address, right?

Yes.

Q The subject is "DJT." Is that a reference to Donald J. Trump?

I believe so.

Q It says, "Jack, FYI, I'm sending over DJT'S tax returns and F/S to you today." Do you see that?

Yes.

Q What was your understanding of what this message was conveying?

That he was going to messenger over Donald J. Trump tax returns and financial statement to me that day.

Q nd when you say "messenger over," is that a hard copy transmittal to you?

Yes.

Q Did he personally deliver it or was there a courier service they would use?

I believe they would use an employee, but it was not Jeff McConney.

Q Trump Organization employee.

Yes.

Q So they would hand-deliver it to you?
Yes.
Q Do you have any understanding why Jeff McConney would be e-mailing you that he is sending over the tax return and F/S for you?
I think he wanted me to prepare me, so I could go down and grab them from the Trump employee.
Q ny particular reason for that procedure that you just described?
I think they were concerned about confidentiality and they wanted to make sure that it was going directly into my hands.
Q They wanted to make sure -- your understanding was they wanted to make sure this information was treated sensitively, yes?
Correct.
Q Were you permitted to maintain this financial information at Ladder or did you at any point have to return it?
During the underwriting of the loan and prior to closing, we kept it and I believe we kept it shortly thereafter in case we needed while selling the loan, and then we returned it.
Q Do you have any understanding as to what happened with the Balducci's lease that we talked about before?
In what regard?

Q Was the Balducci's lease ever signed?
I don't believe it was signed.
Q Do you have any understanding as whether -- as to whether there was a different tenant that they were seeking to place in that same space as identified for Balducci's?
Yes they were looking at Dean & DeLuca.
MS. F HERTY: Your Honor, I marked for identification Plaintiff's Exhibit P X-1307 and put it on the screen. Your Honor, I neglected to move the last exhibit in. I move to admit that prior exhibit.
MR. SU REZ: Objection. Statute of limitations. Relevance.
THE COURT: Overruled and overruled.
MS. F HERTY: Thank you.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1059.)
Q Mr. Weisselberg, drawing your attention to the very top message in the e-mail thread, this appears to be a message from Donna Kidder, the employee from the Trump Organization, dated June 24, 2015, 10:04 a.m., yes?
Yes.
Q To llen Weisselberg and David Cohen, right?
Yes.
Q The e-mail here says, "Lawyer said they didn't have a term sheet." You didn't receive this particular message, did

you?
It doesn't appear that way.
Q This message appears to be in response to a thread that you are on. Do you see the message right below from you, Jack Weisselberg, dated June 24, 2015 to Donna Kidder, David Cohen and llen Weisselberg with the subject "re Dean & DeLuca"? Do you see that there?
Yes, but the time is a little confusing.
Q I completely agree with you. Sometimes when these documents get printed from the discovery process, time works differently in metadata.
But yes, I do recognize that.
Q ny reason to believe that time would have gone backwards for that uppermost message?
No.
Q No. Same here. Okay. So in the message that Donna appears to have forwarded on, you are writing with regards to Dean & DeLuca, that you would like to see the term sheet that they are expecting to sign prior to the lease since the lease won't be signed prior to closing. Thanks, Donna.
nd I'll give you a moment to look through this full thread if you want to refresh your recollection, but do you have any understanding as to why you were writing to Donna Kidder on June 24, 2015 about Dean & DeLuca and a term sheet that they are expecting to sign prior to the lease?

No.
THE COURT: Five-minute warning.
MR. F HERTY: So I'll -- we'll go further on to the bottom of this first page if this helps. Keep going. Right there. Thank you, shley.
Q So at 11:00 a.m., this appears to be an e-mail from you to David Cohen, Donna Kidder, llen Weisselberg, all at the Trump Organization, right?
Correct.
Q The message is just Dean & DeLuca, no "re"?
No forward, right. Correct.
Q nd your message says, "Do we have an unsigned LOI/term sheet for Dean & DeLuca." What is an LOI/term?
Letter of intent. Many tenants sign a letter of intent with the basic terms and then they negotiate the lease after. So I was trying to see if we could get the preliminary document prior to the full lease being executed.
Q Okay. nd then you write, "I need that within the hour, if possible. Trying to get the appraiser in the right spot but at least need that for now. Has one been drawn up yet." Do you see that there?
I do.
Q What does it mean that you're trying to get the appraiser in the right spot?
I don't recall.

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Q Was this information you were seeking to provide to an appraiser with regards to the 40 Wall Street transaction?
I was probably trying to get it to the underwriter who was getting this request from the appraiser prior to finalizing the report, but I don't recall the context of this e-mail.
Q Is that your specific recollection or just as you sit here today, you -- your surmise?
fter reading it, I'm surmising that that's what it was. I did not have direct contact with the appraiser.
Q nd the word "appraiser," is that interchangeable for underwriter at Ladder Capital?
No.
Q But as you're sitting here, that word "appraiser" signifies for you the underwriter could be the appraiser; is that your testimony?
No. I'm saying that the underwriter requested something for the appraiser, so I'm letting the sponsor know that the appraiser is requesting a document.
Q Okay. Thank you.
Sure.
MS. F HERTY: Your Honor, I move to admit this document into evidence.
MR. SU REZ: Objection. Statute of limitations. Relevance.
THE COURT: Overruled. Granted. It is in.

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MS. F HERTY: I have two more and I will be zippity-doo-dah, Your Honor, for today.
THE COURT: Understood.
MS. F HERTY: Can I have the next document, please. Your Honor, I'm introducing an exhibit identified by PX 1249, okay.
Q This appears to be a message from David Cohen at the Trump Organization to you, right?
Yes.
Q June 24, 2015 at 9:24 p.m., yeah?
Yes.
Q Do you recognize that additional Trump Organization e-mail address Tess Carathansis?
It looks familiar, but I don't recall having too much interaction with her.
Q nd the subject of this message is, "forward: Dean & DeLuca draft term sheet," yes?
Yes.
Q nd there is an attachment that I'll represent to you is the document included here. So if you could just take a moment to look at the next page. You see that there?
Yes.
Q nd it is a one-, two-, three-, four-page document. nd if we go to the very last page of that four-page attachment, you see that it's two signature blocks unfilled in, right?

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Yes.
MS. F HERTY: nd, shley, turning to the first page of that, the term sheet, so the attachment.
Q Do you see it says here, "[copy and paste on Trump letterhead]"?
Yes.
Q Dated June 24, 2015?
Yes.
Q It says, "Proposal for Dean & DeLuca"?
Yes.
Q nd then it continues, "for the space at 40 Wall Street," yes?
Yes.
Q Okay. nd then turning to the e-mail, the transmitted document, David Cohen says to you, "See attached. The final won't necessarily be in this form. I didn't put it on the letterhead. Is that okay." Do you see that there?
Yes.
Q ny reason to doubt that you didn't receive in e-mail?
No.
Q Do you recall receiving this e-mail and the attachment?
No.
MS. F HERTY: Your Honor, I move to admit this exhibit the e-mail and cover -- and attachment.
THE COURT:

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MR. SU REZ: Objection. Statute of limitations. Relevance.
THE COURT: Overruled. It's in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1249.)
MS. F HERTY: The next one will be two seconds.
THE COURT: Go ahead.
MS. F HERTY: Your Honor, there is PX 1428.
Q Okay. This is an e-mail from David Cohen to you on June 24, 2015 a few minutes later at 9:40 p.m. The subject is 40 Wall and there's an attachment.
Yes.
Q nd at the bottom, there's a scan e-mail "@trumporg forward." It appears that there was a document forwarded that was ultimately forwarded to you and I'll ask you to turn to the attachment to this message.
Okay.
Q Do you see that there is a letterhead, "40 Wall Street, L.L.C."?
Yes.
Q From 725 Fifth venue, New York, New York?
Yes.
Q Dated June 24, 2015, yes?
Yes.
Q nd again, proposal for Dean & DeLuca at the 40 Wall

Street space, yes?
Yes.
Q nd if you just quickly look at the very last page of this attachment, you see two signature blocks, yes?
Yes.
Q Unsigned?
Yes.
MS. F HERTY: Your Honor, I move to admit --
Q ny reason to doubt you didn't receive this message?
No.
MS. F HERTY: Okay. Your Honor. I move to admit.
MR. SU REZ: Objection. Statute of limitations, relevance.
THE COURT: Overruled. It is in evidence.
MS. F HERTY: We can rest for this afternoon. We'll continue tomorrow with this witness.
THE COURT: Okay. I'll direct the witness not to discuss this case or your testimony with anybody until you're all through with your testimony. You're excused from the witness stand for now.
(Witness exited the stand.)
THE COURT: I understand we have some housekeeping matters to discuss. You want to approach?
(Whereupon, a discussion was held off the record.)
(Whereupon, the trial was adjourned to October 19,

25023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al

J CK WEISSELBERG, D VID MC RDLE
October 19, 2023

NICOLE C. ROBINSON

Original File 101923TRUMP.txt
Min-U-Script® with Word Index

SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

60 Centre Street
New York, New York 10013
October 19, 2023

B E F O R E:

HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Well, the plaintiff seems to have a full complement. Defense side, where is everybody?

MR. KISE: Deposition.

THE COURT: Other things to do?

ll right. We're going to have a short sidebar.

(Whereupon, there is an off-the-record discussion held.)

THE COURT: Okay. Let's get the witness.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: Let's resume the direct examination for Jack Weisselberg.

MS. F HERTY: Thank you, Your Honor.

CONTINUED DIRECT EX MIN TION
BY MS. F HERTY:

Q Good morning, Mr. Weisselberg.

Good morning.

Q Do you recall back to yesterday we had a discussion

about Mr. Trump's financials?

Yes.

Q nd I believe you testified that you would receive a hard copy version of those financials; right?

Correct.

MS. F HERTY: Okay. I'm going to ask to put up on the screen PX 654. nd I'll just note on the record I've marked for identification, Your Honor, plaintiff's next exhibit, PX-504.

Okay.

Q nd take a quick look at that document I've placed in front of you, Mr. Weisselberg, and I'll give you a minute to review it, please.

Okay.

Q nd I'll just draw your attention to the very first page of the document. Do you see that there are a series of numbers that begins L as in "Larry," C as in "Charles," 00295757?

Yes.

Q I'll represent to you that this is a document produced by Ladder Capital. So this is a document from the Ladder Capital files, okay?

Okay.

Q Do you recognize this document, maybe not specifically, but generally, as the form of the financials Ladder Capital

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received from the Trump Organization?
It looks familiar. I can't guarantee this is what is I saw.
Q But no specific recollection of this document, but a general recollection. Is that fair?
Correct.
MS. F HERTY: Your Honor, I move to admit this into evidence.
THE COURT: Granted. It's in.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled.
MS. F HERTY: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 504 in evidence.)
Q nd I want to turn your attention to a couple of pages in this document, so I'll ask that you turn to the third page of your document. nd if you need help, we'll put it on the screen, as well, okay?
So you'll see that this is the independent accountant's compilation report. nd we'll scroll down to the bottom of this note. We'll go to the date.
nd just confirming, Mr. Weisselberg, you see that this is the Statement of Financial Condition of Donald J. Trump for June 30th -- as of June 30, 2014, yes?

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Yes.
Q Okay. nd the accountant's compilation report is signed on November 7, 201. Do you see that there?
Yes.
Q I'll represent to you that this is the date that this document was compiled and issued to be finalized, okay?
Okay.
Q Bearing that date in mind, do you -- would you agree with me that this is probably the financials that you would have received in connection with the 40 Wall Street loan transaction?
I can't confirm, but probably.
Q Okay. nd we'll go over some dates as to when the loan transaction closed, but I'll represent to you the 2015 Statement of Financial Condition was not issued as of the end of the 40 Wall transaction, okay?
Okay.
Q Okay. ll right. Now, let's flip to the next page. You'll see there is a page titled " ssets." Do you see it there?
Yes.
Q Okay. Looking at the line it states: "Cash and marketable securities." Can you read the amount that's listed there?
302,300,000.
Q Do you have any understanding as to what that figure

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represents? Is that liquid assets?
That would be liquidity.
Q Liquidity?
Yes.
Q Okay. Let's turn to the next page. I'll draw your attention to the line that states "net worth." Can you read that figure there?
5,777,540,000.
Q Roughly 5.8 billion, is that what that number reflects?
Just short of 5.8 billion.
Q Okay, great. Thank you. nd we can put that aside. Just a broader question. Is it a fair understanding that Ladder relied on the statements of financial condition's submissions as part of the underlying of their 40 Wall loan?
For the 40 Wall loan liquidity is what we were really paying attention to because we had some contingent liabilities, recourse obligations. So we wanted to make sure there was enough liquidity to cover the obligations.
Q nd I don't think that quite fully responds to my question. My question was that you relied upon the Statement of Financial Condition, so would that be a yes?
The net worth statement is one of many things that we look at in the underwriting process. I wouldn't say it was a key factor.
Q It was a factor that you relied upon?

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It was a factor.
Q Thank you, okay.
Were there other documents you reviewed to determine that Mr. Trump had the specific net worth?
Liquidity, no.
Q Okay, thank you.
ll right. I'm going to hand up a document, and while I'm doing that I'll just ask if you're familiar with an acronym, an "RUC memo?"
Yes.
Q What is an RUC memo?
RUC stands for Risk and Underwriting Committee and that is what we do for all large loans or unique loans.
Q Okay. re you -- the RUC memo, that's something that Ladder Capital has as part of its business practices; correct?
Right.
Q So I'm going to have my trial vendor put up on the screen the document I just passed forward to you. It's --
MS. F HERTY: Your Honor, I've marked for identification plaintiff's next exhibit. It's marked PX-00645 and I'll put that up on your screen.
Q This is an e-mail from Craig Robertson at Ladder Capital dated June 29, 2015, 10:47 a.m. and it's addressed to the Conduit Committee at Ladder Capital.
Did we discuss that committee yesterday, the Conduit

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Committee?
We did.
Q nd the Conduit Committee, they're reviewing the terms on the -- the loan deal; right?
Yes.
Q nd the names that are listed in this e-mail you'll see them all up on your screen. Do you recognize that all of the names included in the bcc line? Were those all -- excuse me -- members of the Conduit Committee?
No.
Q Who are the names listed in that bcc entry there?
They're Ladder employees that may have been involved in the transaction at some level, so they were included on this to know when the committee meeting was.
Q Okay. nd the Conduit Committee, that was the e-mail addressed list we saw yesterday; right?
It may have included -- some of them may have excluded some of them. I'm not sure at this time what Conduit Committee covered.
Q But there was a generic e-mail mailbox designated for the Conduit Committee as indicated here on this message; right?
Correct.
Q nd so sending an e-mail to the Conduit Committee at LadderCapital.com ensured that the members of the Conduit Committee receives this e-mail; right?

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Correct.
Q Okay, great.
nd the subject of this message is the RUC memo: 40 Wall Street; right?
Correct.
Q nd then there appears to be an attachment, one is an image and the other is 40 Wall Street RUC memo.PDF and I'll represent to you, Mr. Weisselberg, I attached specific attachments so can you take a moment to look through the attachment that I've included in this exhibit and just confirm for me that that looks like the RUC memo for the 40 Wall Street transaction?
Yes.
MS. F HERTY: Your Honor, I move to admit this into evidence, please.
MR. KISE: Your Honor, just two things: One, statute of limitations; the other is I want to point out a bit of New York history. This document does confirm that the property at 40 Wall was in fact the tallest building --
MS. F HERTY: You are stealing my thunder. I was going to highlight --
MR. KISE: I wasn't sure you were going to say --
THE WITNESS: I believe it was for a month or two. I think it was the tallest building for a month.
MS. F HERTY: Only for a month.

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THE COURT: Overruled on statute of limitations grounds.
Q So let's focus on the first cover e-mail, please.
Were you there at the -- is there an RUC committee presentation when you have the RUC memo?
Yes.
Q nd were you in attendance at that committee presentation?
I believe at the time it was in person, so yes, I would have been the one presenting.
Q Okay. So you were apart of this process, fair to say?
Yes.
Q Okay, great.
In the very first paragraph Craig states that this is the RUC memo for 40 Wall Street and it includes some of the terms -- it includes the terms for the loan deal that we've been talking about since yesterday; right?
Yes.
Q Okay. Turning to the second paragraph it says that "the loan proceeds will be utilized to refinance an existing mortgage originated by Capital One Bank (the prior loan which featured a principal balance of 160 million (137.31/SF)."
This is a reflection of Ladder Capital's understanding of the Capital One loan that they were going to be refinancing, yes?

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Correct.
Q Okay. nd then the next paragraph begins, " s of June 18, 2015, Cushman & Wakefield appraised the property at a value of 540 million (463.44 per SF)."
Is it a fair assessment of this line in this e-mail that as of June 18, 2015 Ladder Capital had received an appraisal for the 40 Wall Street property at a value of $540 million?
I believe we received the report shortly after, but the value was as of that date.
Q Okay. So Ladder was aware of that value as of that date, yes?
Correct.
Q Okay. nd then it includes information that a loan amount will be 160 million with a 3.665 percent interest rate; right?
Correct.
Q nd then there is a 25-year amortization on the loan. Do you recall that that 25-year amortization rate contemplated the reset on the ground lease?
There were various factors. I believe that was one of the driving forces was to make sure that the principal balance of the loan had ammed down to a level that we would be comfortable with the rent -- the ground rent reset.
Q nd just to confirm, you made a reference to "ammed

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down." That means to amortize down, yes?
Correct. The principal balance of the loan amortized down.
Q Okay, thank you.
nd the next sentence, does this refresh your recollection that the loan did in fact close in or about July 2nd of 2015?
It was scheduled to close July 2nd, according to this. I believe it was around that date.
Q Let's turn to the memo itself.
nd on that very first cover sheet there is a picture of 40 Wall Street --
MS. F HERTY: We missed a page. Next line. Thanks, shley.
Q Can you just tell me what that acronym under the picture of the building says, the address and then there is a loan number: "OWL-150430-03." Does that number have any particular significance or meaning to the combination of letters and numbers?
The letters represent outstanding whole loan and the numbers represent the date that the application was signed. So in this case it was pril 30, 2015 and the 03 at the end means that it was the third loan that we had an application signed that day. So on pril 30th of 2015, three loans or at least three loans were signed up and this was the third one.

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Q nd that's applications at Ladder Capital, not applications with the Trump Organization; right?
Correct.
Q Okay, great.
Let's turn to the next page. nd I'll just ask you broadly with regards to the RUC memo is it a fair characterization that they're organized in a certain manner? For example, we're looking at a page right now that states "executive summary." So is the organization broken into sections of this memo?
Yes. t this time this was the format for all committee memos.
Q Okay, great.
nd so this first section we're going into is the executive summary section of the RUC memo; correct?
Correct.
Q Okay. So looking at this section in the middle of the page, you'll see that there is a number one with some words printed there. Do you see that section?
Yes.
Q Okay. nd this point, number one states: "The physical occupancy presented above includes 118,500 square foot retail space with respect to the sponsor is in negotiations with Dean & DeLuca for a 15 (number 15) year lease at a rental rate of 1,400,000 ($75.68 per square foot). Such lease is expected

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to be executed shortly after closing. t closing, an entity controlled by Donald J. Trump will sign a 12 (12) year master lease to occupy the suite at substantially similar economics, which lease will be guaranteed by Donald J. Trump.
Mr. Trump will be required to make monthly payments under the master lease for the term of the loan until the space is leased to a tenant acceptable to lender when substantially similar economics to the Dean & DeLuca lease and such tenant takes physical possession of the space and commences payment of full unabated rents." Do you so he that there?
I do.
Q nd is this paragraph acknowledging in the RUC memo that there is a master lease to be included as part of the deal terms; right?
Yes.
Q nd that Donald J. Trump will execute that master lease; right?
Yes.
Q nd that there will be a guarantee that Donald J. Trump executes; right?
Yes.
Q nd in this particular report there is a reference to Dean & DeLuca. It's no longer Balducci's, yes?
That's correct.
Q ll right. Let's turn to the next page.

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Looking at the top paragraph, it's still the "Executive Summary" section. This section is titled -- subsection is titled "Reserve Comments." nd I'll draw your attention to the bottom two paragraphs of this section. It states:
"In lieu of ongoing reserves for insurance, tenant improvements, leasing commissions, capital expenditures and ground lease payments, Donald J. Trump will provide a personal guaranty." Similar discussion as we had yesterday, this is recognizing the Donald J. Trump guaranty in connection with those reserves, yes?
Yes.
Q nd the next sentence, the "TI/LC" is that tenant improvements and lease commissions?
Yes.
Q " nd free rent reserves outstanding at closing are presented below," and that's a reference to this number -- this chart on this particular page, yes?
Yes.
Q Okay. " nd in lieu of any -- an upfront reserve for these items, Donald J. Trump will provide a personal guaranty for such amounts outstanding," yes?
Yes.
Q So, again, the reflection of the guaranty has been included in the executive summary; yes?
Yes.

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Q Okay. Let's turn to the next page, still within the executive summary. Third paragraph. This is again acknowledging the Capital One deal that it was going to be refinanced by the Ladder deal, yes?
Yes.
Q nd again, there is a reference to the $540 million Cushman appraised value. That was the value Ladder had in its possession as of the time of this RUC memo, yes?
Yes.
Q Okay. We'll go to the next page, please.
nd in this portion of the RUC memo, Executive Summary section, there appears to be an analysis of the ground lease, yes?
Yes.
MR. ROBERT: Objection. We've held back with all the leading questions, but I think at some point it has to be more of a direct, Your Honor.
THE COURT: s usual, I see both sides. You can't testify -- you know, you can't suggest an answer. If you want to clarify something, okay, but just be cautious in that regard.
MS. F HERTY: Sure, Your Honor.
Q nd this was included in the RUC memo because it was relevant to the loan deal. Is that a fair characterization?
Yes.

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MS. F HERTY: Turn to the next page, please.
Q This is the final page of the Executive Summary section. There is a paragraph in there subtitled "Sponsor."
Do you recall who the sponsor was of this deal?
Yes.
Q Who was that?
Donald J. Trump.
Q So is this section included in here to describe who Donald J. Trump is?
Yes.
Q nd I'd like you to look at the very last paragraph contained in this section of the sponsor on the executive summary page.
Do you recall -- I'm drawing your attention to the very last sentence, which reads: " s of June 30, 2014, Mr. Trump reported a net worth of nearly $5.8 billion and a liquidity in excess of $300 million."
Do you recall where that information came from to be able to be included in the Executive Summary page?
The underwriter wrote this and reviewed the financial statement. Typically this would come from a personal financial statement, but I didn't write this.
Q Would you agree with me that this information looks substantially similar to what we just reviewed in the prior exhibit, which was the Statement of Financial Condition of

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Donald J. Trump as of June 30, 2014?
Yes.
Q Okay, great.
THE COURT: Just I want to address all the attorneys, okay. I could have made this comment at any point. It's a pet peeve of mine when the lawyer questioning a witness comments on the answers. I don't mind "thank you," but "okay, great." No, don't do that for at least two reasons: One, it could possibly influence the testimony -- following testimony; and two, I don't know whether the reporters take this down or not. So ask a question, get an answer, ask the next question, but don't comment on the answer you just heard. Thank you.
Q We'll turn to the next page. Turning your attention this is now, a section identified as "Deal Strengths," yes?
Yes.
Q Drawing your attention to paragraph four subtitled "Conservative Loan Structure."
Is this a reflection -- well, what is your understanding of the second bullet under this particular subparagraph, "The loan features a warm body carve out guarantor, Donald J. Trump. s of June 30, 2014, Mr. Trump reported a net worth of nearly 5.8 billion and liquidity in excess of 300 million.
Sorry, what is the question?

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Q What is your understanding of what that is a reflection of?
You're showing that it's a strong sponsor.
Q Does it say the word "strong" in there?
The reflection is that it's a strong sponsor. You asked me about the reflection. This is saying that we have a strong sponsor that has a large net worth and a lot of liquidity.
Q Understood.
nd this is a similar information that we saw from the prior exhibit with a net worth of 5.8 billion and liquidity in excess of 300 million; right?
Nearly 5.8 billion, yes.
Q Information you would have received from the sponsor?
Correct.
Q Yes. nd then I'll just draw your attention to one more page. It's 13 in the document, a section titled, "Sponsorship."
Okay.
Q nd drawing your attention to that second box that states, "Financial Statement-Donald J. Trump." nd then there is a box of information. It says, "Statement type: Personal financial statement, financial statement date: June 30, 2014."
nd then there are a series of numbers, it looks like monetary amounts. Is this information that Ladder independently put

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together?
This is a result of what we received from the sponsor.
Q Okay, great. We can put that aside.
THE COURT: Remember, don't say "great."
MS. F HERTY: I did it. Sorry. I'm saying it to myself, but you're right, Your Honor. I apologize.
THE COURT: I just want to comment on one other part of the examination. You read a sentence and then asked him for his reflection. Was that the word?
THE WITNESS: I believe so.
THE COURT: nd then he said it reflects that there is a strong sponsor and you said "do you see the word 'sponsor' there." You asked him what it meant to him. We all know the word "sponsor" wasn't there, but so I'll leave it at that.
MS. F HERTY: Your Honor, I've marked as plaintiff's next exhibit, PX-00640, which I've handed up to the witness.
Q Mr. Robertson -- Mr. Weisselberg, I've also put PX 00640 on the screen for you.
Does this appear to be an e-mail from Donna Kidder at the Trump Organization addressed to Craig Robertson at Ladder Capital dated June 24, 2015, 9:10 a.m.?
Yes.
Q nd there are ccs on this e-mail, llen Weisselberg,

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you at Ladder Capital and Jeff McConney?
Correct.
Q nd the subject is "re: 40 Wall Budget Questions;" right?
Yes.
Q nd it appears that there is an attachment?
Yes.
Q Okay. Let's go to -- further into this e-mail. It is the third page of this PDF document and there is an e-mail on Tuesday, June 23, 2015 at 10:28 a.m. from Craig Robertson at Ladder Capital to Donna Kidder with llen Weisselberg and you as ccs on the message and the underlying subject is "40 Wall budget questions;" right?
Yes.
Q nd remind me, Craig Robertson, he was the underwriter on the 40 Wall Street loan deal?
He was the senior underwriter.
Q The senior underwriter?
Yes.
Q Were you always copied on messages that Craig Robertson, Senior Underwriter, sent to the client?
I can't confirm always, but typically the originator is cc'd on e-mails between the underwriter and the client.
Q So the general practice would be that you should be or would be copied, but you can't confirm that it was every single

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message you were copied?
Correct.
Q nd this message titled "40 Wall budget questions, do you have any understanding as to why Craig Robertson would have sent an e-mail to the client, the Trump Organization, about budget questions related to 40 Wall Street?
Yes.
Q What is your understanding?
On all deals there is a back and forth between the underwriter and the borrower with questions on the financials. Sometimes included in this e-mail there are one-time costs that would go what we call "below the line" to not property cash flow, but once every ten years, something like that.
Other times, the number may jump a lot in one year or it may go down a lot in one year, which is not typical, so we'll have questions so we can get some clarity on that and that's what this e-mail was.
Q nd what is your understanding for the need for those questions? Does it result in any change in the budget or in any change in underwriting the loan?
Yes, yes. Typically we'll be able to figure out why it happened and either the budget may change or we'll have a footnote that we can add to our underwriting about why there was such a difference in the number.
Q nd when you say "the budget may change," is that the

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underlying client's budget or are you referring to something that Ladder Capital maintains?
It could be both.
Q Okay. nd you made reference to a one-time expense, and I'll turn your attention to page -- the page we're still on.
In Craig's 10/28 e-mail to Donna with a copy to you and llen, middle of the -- the actual words printed on this page, Craig writes: "R&M expenses increased by 400 K," 400,000?
Correct.
Q " ppears to include one-time expenses (highlighted differences below.)"
Is that an example of what you were just talking about, a one-time expense that the underwriter may have addressed with the client?
It could be, yes.
Transcript continues on the following page....

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Q Then there appears to be a response from the client, right?
Yes.
Q ny understanding what occurred with regards to this particular exchange between Robertson and Ms. Kidder that you were copied on on June 24th and June 23, 2015?
I'm sorry. What exactly are you asking?
Q I asked if you had any understanding as to what occurred as a result of this exchange.
I don't know what the result was.
MS. F HERTY: Your Honor, I move to admit this exhibit into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 640.)
MS. F HERTY: I have another exhibit to pass up. It's -- Your Honor, I marked them, the next document, as Plaintiff's PX-00636. I've handed it up to the witness.
Q Mr. Weisselberg, I've also put this document on the screen in case you want to review it there.
Okay.
Q This top e-mail appears to be a message from Donna Kidder dated June 10, 2015 addressed to you at Ladder Capital,

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Jeff McConney at the Trump Organization, llen Weisselberg at the Trump Organization. The subject is, "re: Quick questions. nd there appears to be an attachment memo to "accounting-rosenberggreenbergblahallc-partof32ndfloor40wa... pdf". You see this e-mail in front of you?
Yes.
Q This is early June, right, June 10th?
Yes.
MR F HERTY: ll right. Can we go to the bottom of this message up a little higher. Not the attachment. Okay. Sorry.
Q So the underlying e-mail is from you to Donna, Jeff and llan at the Trump Organization, subject, "Quick questions." You're asking, "Can you guys help me with these questions? Craig is out today and may know these answers, but I need to get an answer back today." The reference to Craig here, is that Craig Robertson?
Yes.
Q nd you're asking about "Murphy & O'Connell's lease expired at the end of pril 2015. Have they vacated the property."
What is your recollection as to who Murray and O'Connell's is or their lease?
This is a tenant at 40 Wall.
Q nd the next entry is, "LaRocca Hornik, Rosen,

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Greenberg & Blaha, L.L.P.'s lease expired at the end of February 2015. Have they vacated the property."
What is your understanding as to who LaRocca Hornik Rosen Greenberg & Blaha is?
tenant at 40 Wall Street.
Q So you're inquiring about tenants at 40 Wall Street in this message; is that correct?
Yes. lot of times when we close a loan, the lease expiration is right around the time we close or shortly after, so we're just getting an update on some of the tenants that were around the date that we didn't have the information when we either closed or are about to close.
Q nd your understanding is that this information was necessary for Craig?
Well, this is the kind of question that would typically come from an underwriter and for some reason, the question was coming up within the office at Ladder, so I was asking it.
Q Was this information at all relevant for the appraisal at 40 Wall Street at this time, to your understanding?
It was prior to the date of the value, so it would be. I don't recall the size of the tenants, if it would have had a material impact; but yes, any tenant at the property would have an impact on the appraisal.
Q Okay. nd you write in this message, "But I need to get an answer back today."

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Do you recall why you needed an answer so promptly on June 10, 2015?
I do not.
Q Okay.
THE COURT: "Okay" isn't as bad as "great," but try not to do it anyway.
MS. F HERTY: Your Honor, I move to admit this document into evidence, please.
MR. ROBERT: Statute of limitations objection, sir.
THE COURT: Overruled. Granted. It's in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 636.)
MS. F HERTY: I marked as plaintiff's next exhibit P X-625. Handed it up to the witness.
Q Mr. Weisselberg, please just take a quick look at this document and tell me whether you recognize it.
I don't recognize the specifics of this, but it is a typical form, so I do recognize the form.
Q nd do you recognize the form that this is a guaranty -- do you recognize that this document is a guaranty of recourse obligations?
Yes.
Q nd this document is executed as of July 2, 2015 by Donald J. Trump according to the second page of this document. Do you see that there?

I don't see it on the second page.
Q First page. You were right.
I don't see that it was executed by him on the first page.
Q It is the very first page. Do you see that this is a document entitled, "Guaranty of Recourse Obligations."
It needs to be signed to be executed. I don't see a signature.
Q Let's go to the very last page of this document.
I recognize that this is an executed recourse obligation.
Q Do you recognize that signature?
I do.
Q Whose signature do you recognize that to be?
That's Donald J. Trump signature.
Q Is this consistent with the guaranty of recourse obligations that all of the documents we've been discussing prior to this document contemplated?
I would have to go through to look at the numbers to see if they match the numbers; but yes, this would be the loan document signed by him.
Q No reason to doubt that it is?
I don't know if it is consistent with the memo. lot of times, things change after the memo, so I couldn't say without going through in-depth to know if it was the same.

Q Fair to say that this signed executed version is a final version of the terms of the recourse guaranty in connection with the 40 Wall Street deal, right?
Yes, fair to say that.
Q You can put that to the side, please.
MS. F HERTY: Your Honor, I'd like to move that into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. Grant the. It's in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 625.)
Q Mr. Weisselberg, in connection with the 40 Wall Street deal, do you recall whether you received an inquiry from your father to respond to certain press questions about the deal?
He was asking for my input on questions from the press.
THE COURT: You don't have to take down -- if it is now, we can move on, but sometimes it sounds like "I agree" or something, so --
MS. F HERTY: It is a tic. We marked as the next Exhibit PX-1062. We'll put it up on the screen.
Q The very top e-mail in this thread on Plaintiff's Exhibit 1062 is an e-mail from Weisselberg at trumporg.com. Is that llen Weisselberg?
Yes.
Q Dated ugust 4, 2015, 7:35 p.m., addressed to you at

Ladder Capital with a subject of "re, 40 Wall."
Do you see that there?
Yes.
Q We will go to the third page of this document and the underlying message appears to be from josh. -- I'm not going to say it. I'm going to spell it. M-R-O-Z-I-N-S-K-I @ crenews.com, sent on Tuesday ugust 4, 2015, addressed to Hope Hicks. The subject is "40 Wall."
Do you see that document there?
Yes.
Q It appears in sum and substance that "I'm a reporter from Commercial Real Estate Direct" and he states, Hope Hicks was listed as a press contact on a recently -- released recently issue by the Trump Organization and Trump owns 40 Wall Street in Manhattan. There is a reference to "Ladder Capital has provided $160 million of debt against the property." The individual states he had several questions and you can see within the body of this message there are several questions, right?
Yes.
Q Is this the message you recall your father forwarding to you to get some input on how to respond?
Yes.
MS. F HERTY: Let's turn to the next message in the chain. If we can scroll up just a little bit.

Q It appears that Hope Hicks at trumporg.com or hhicks@trumporg.com forwarded this message on ugust 4, 2015 to manda Miller or amiller@trumporg.com. Do you know who manda Miller is?
Yes.
Q Who is manda Miller?
n employee at the Trump Organization at the time.
Q Do you know what her position is at the organization?
I do not.
Q It is also addressed to Donald Trump Jr. or djtjr@trumporg.com. Do you see that there?
Yes.
Q Then the next address on this e-mail address is llen Weisselberg. That's your father, right?
Yes.
Q nd Ms. Hicks writes, "Please see below and let me know what guidance you would like to provide, if any," right?
Yes.
Q nd then from there, is that when your father forwarded you the message at 3:12 p.m.?
It would appear that way.
Q nd your father, Mr. llen Weisselberg's, message to you in sum and substance says, " nything you want me to add when I call the writer back? See below," right?
Yes.

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Q If we go to your message at 3:26 p.m., there appears to be a pretty fulsome response. Is this the inputs you -- are the inputs you provided to your father included in the body of this message?
They could be, but I couldn't be sure.
Q I didn't hear you the answer.
I couldn't be sure if it was. I believe so.
Q nd the very first entry, it states, "$540 million value, so 29.6 percent."
ny understanding as to what that particular line entry references, the $540 million value?
His initial question was what was the LTV on the deal, so this was the loan to value.
Q nd what does the $540 million represent?
It says the $540 million value, so the 29.6 percent is our loan to that value.
Q nd is that also the appraised value of what the 40 Wall Street asset?
It is.
MS. F HERTY: Thank you. I will move onto the next exhibit before I move to admit it, Your Honor.
MR. ROBERT: Statute of limitations objection.
THE COURT: Overruled. It's in evidence.
MS. F HERTY: Thank you Your Honor.
(Whereupon, the Document was marked in evidence as

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Plaintiff's Exhibit 1062.)
Q I know we discussed it, but just confirming the 40 Wall Street deal was ultimately securitized?
Yes.
MS. F HERTY: I've handed to the witness the document I've marked as PX-1070. Putting it on your screen here.
Q This is a message from you dated ugust 4, 2016 addressed to llen Weisselberg. Subject, "Forward, here's the note from Trepp and an excerpt from Moody's."
Do you see that forward there?
I'm sorry. Which part are you referring to, the e-mail from me to him or --
Q Just confirming you forwarded this message to llen Weisselberg, your father, on ugust 4, 2016, right?
Yes.
THE COURT: Question for the witness. re there any other llen Weisselbergs in this universe that you know of?
THE WITNESS: I don't think so.
THE COURT: ll right. So why don't we just call him " llen Weisselberg," not "your father," not "your father llen Weisselberg," et cetera. So any reference to llen Weisselberg is llen Weisselberg.
MS. F HERTY: ppreciate the direction, Your Honor.

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THE COURT: Okay.
MR. KISE: To the extent we can, I know we're moving this along and we are not trying to press, but a lot of these questions are leading questions. They're just -- they're not framed in the direct, the normal sense --
THE COURT: Right, without agreeing or disagreeing with you.
Ms. Faherty --
MR. KISE: Not really officially objecting.
THE COURT: I'm not officially ruling, but we take your point.
Q What do you recall that this message is forwarding here, Mr. Weisselberg?
re you referring to the message that I forwarded to llen? I was forwarding the response to a question that he had asked us from our head of securitization.
Q nd for what reason were you forwarding that response?
They had e-mailed and asked the question about why they were on the "watch list." So this was the response from our head of securitization.
Q So if you scroll down to the second page of this document, is this what you're referring to, that there's a message between emily.flitter@thomsonreuters.com, dated ugust 4, 2016, to llen Weisselberg with the subject, "Here's

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the note from Trepp and an excerpt from Moody's"?
Yes.
THE COURT: Five-minute warning.
Q What is Trepp?
Trepp is a service that publicly distributes information about securitized loans as well as other loans just regarding the rate that the lender/ servicer -- it gives you all -- all public information about the loan.
Q nd the reference to an excerpt from Moody's, what is Moody's?
Moody's is a rating agency.
Q nd the -- the underlying message from Emily Flitter includes a box and one of the boxes, there is a title, "Watch List Commentary." Do you have any understanding what that is a reference to, the watch list commentary as of July 2016?
Yes. Part of what Trepp does, they describe the loan and if there are any issues on the loan, they'll put it on a watch list that they're concerned about the loan, and then they'll track it every month until it changes to either going towards a default or the issue was resolved.
Q Do you recall what the issue was that was triggering this watch list commentary particularly as it related to the 40 Wall Street Street loan?
On this one because of the guaranties, mainly the master lease as well as free rent, when the servicer ran their

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cash flow, it was tripping the DSCR test that we had. But in reality, which is what we found out through our research, it didn't actually triplex it, but the servicer thought that it had been tripped or it could be tripped which is why it was on the watch list and not actually going into default.

Q nd the forward that you passed along to llen Weisselberg is your internal review of what was being triggered in the watch list and what explanation you could provide? Is that a fair reading of this e-mail?

Yes. I wanted confirmation of what I assumed of what was happening from our head of securitization, so he replied by agreeing with me.

MS. F HERTY: One second, Your Honor.

THE COURT: Sure.

MS. F HERTY: I have no further questions, Your Honor.

Thank you, Mr. Weisselberg.

Oh, I do have to move this document into evidence, please.

THE COURT: They may have to object.

MS. F HERTY: They do. They don't need to.

MR. ROBERT: ugust of 2016. No, no objection.

THE COURT: Oh, that's right. It is after -- well, you could still object to the extent that --

MR. ROBERT: This one, I'm okay with. Thank you,

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sir.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1070.)

MR. ROBERT: We reserve to call him back during our case, Your Honor.

THE COURT: Okay. So let's break now. The witness is excused, right?

Thank you.

(Witness excused.)

THE COURT: See you in 15 minutes.

(Whereupon, a recess was taken.)

THE COURT OFFICER: ll rise. Part 37 is back in order. Please be seated and come to order.

THE COURT: You may have noticed I don't run up the stairs anymore. It is not because I've run out of energy. It is that people told me that it is enough. Okay. Would the plaintiff like to call it's/her next witness?

MR. G BER: Yes, Your Honor. The people call David Mc rdle.

THE COURT OFFICER: Witness entering.

D V I D M C R D L E , a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE COURT OFFICER: Please state your name and business address or home address for the record.

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THE WITNESS: My name is David Mc rdle. My corporate address is 1290 venue of the mericas, New York, New York.

THE COURT: Let's begin the direct examination of Mr. Mc rdle.

DIRECT EX MIN TION

BY MR. G BER:

Q Good morning, Mr. Mc rdle. Can you please state your employer and title for the record, please?

I'm the senior managing director at Cushman & Wakefield here in New York City.

Q Mr. Mc rdle, you worked on several valuation and appraisal engagements for the Trump Organization, that's correct?

That is correct.

Q Before we discuss some of that work, Mr. Mc rdle, could you, please, give us a high level view of your professional background?

Certainly. I've been in the real estate business over 40 years. 35 years of which involves commercial real estate appraisal also with experience in residential, different forms of residential valuation. For the last 30 years, I've been employed with Cushman & Wakefield here in New York City appraising general commercial properties.

Q Do you have any licenses or relevant professional

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qualifications that you employ in your work?

I do. I hold the M I designation which is considered the, you know, premier designation in our industry. It is awarded by the ppraisal Institute and widely recognized as the top designation. I'm also registered in the State of New York as a New York certified general operator. gain, that is the broadest and highest license that you can achieve in the state for legal purposes.

Q nd so, Mr. Mc rdle, are you familiar with the uniform standards of professional appraisal practice or USP P?

Yes, very much so.

Q Could you tell me what USP P is?

USP P represents the uniform standard appraisal practice kind of guidelines and standards that appraisers are expected to uphold. It's formed by quasi-government trade group industry. You know, experts in the appraisal world collaborate to -- you know, to set these guidelines and standards to, you know, serve the public the best and fairest.

Q nd so does USP P govern your work on appraisal engagements?

Very much so. They are guidelines. It is not a governing body, but it's a -- it's kind of a blueprint for standards, ethics, morals.

Q So I'm just going to ask what are the sorts of requirements in USP P that you follow when conducting an

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appraisal engagement?
Well, there is a standard protocol that should take place at the onset of an assignment. We call it the engagement process. We establish, you know, who our client is, who intended users might be of the product and generally defined, obviously the identify, the subject property at hand and then also get a good understanding at least early on -- of the general scope, you know, what are we trying to accomplish here, what are the needs of the client, and that's the sort of general framework we like to capture in the letter of engagement.
Q Does it prescribe any specific form of a report, oral versus written or otherwise?
Very much so. I mean, this letter of engagement briefly focuses on the type -- the property you're appraising, the client base, the form of reporting. We do have a liberty of reporting verbally. Generally, two other forms of written reports are widely used, restricted and -- which is more of a concise written report and there's also an appraisal report which would be the most comprehensive document. So we clearly define in the letter of engagement which product the client would receive.
Q nd as an appraiser and an M I, are you allowed to give an opinion of value without making that in conformity with USP P?
No. No. We --

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Q nd so does USP P require that an opinion of value be supported by disclosed methodology or specific requirements?
USP P suggests that there's certain uniform methodologies be adopted for each appraisal report. We call it -- well, this is a due diligent portion of the assignment that's necessary and there's also the actual valuation itself takes place by using one, two or three of the standard approaches to value.
Q So maybe going from generally to more specific, I wanted to talk about real property and focuses on appraisals of vacant land.
Can you walk me through the process that you take when you are engaged to prepare an appraisal of real property or vacant land?
Sure. Well, the very first thing we would want to understand is the vacant land itself. The physical attributes or characteristics such as size, shape, condition, topography. Would also be very interested in what could be legally constructed or erected at the property or developed and that, of course, would fall into the category of zoning. It's very important that we have to understand what you could feasibly develop at that property.
Q Where do you acquire the information that goes into that consideration? How do you learn about the zoning, the legal requirements, the condition and the like, the things you

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just described? Where do you get your data for that?
Sure. It's a wide combination of data sources. Of course, there's public information out there, zoning departments, assessors in the local municipalities. There's also very meaningful information that is supplied by owners and clients.
Q Excuse me. What type of very meaningful information do you mean when you say that?
Yeah. Well, we want to gain a very good understanding of the subject property. Typically, the client or owner knows that property better than anyone and, you know, obtaining a survey, for example, would be a key document that we would want from an owner or a client. nd then any nuances, approvals or any legal or any other factors that might play into the use of this property that may impact its value if it were to be put to market for sale.
Q nd moving onwards to discuss how you might then take that information and generate a value for the property, are you familiar with the concept of highest and best use?
Certainly.
Q Can you describe your understanding of that content?
Yes. Highest and best use is important in that we want to be sure that we are developing a value based on four important tests within the highest and best use analysis. Basically, we want to support why the property should be

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developed in a certain way. Highest and best use includes look at a property on a vacant basis and -- vacant land basis and also an improved basis.
If you're focusing on vacant land right now, the test includes what's legally permissible, what's physically possible, what is feasible, and what is most profitable. So there are four tests to the highest and best use analysis and we would methodically go through those and, you know, reach our conclusion considering those four tests of the asset.
Q nd that gives you a conclusion of value?
It doesn't give us a conclusion of value, but it -- it looks into the use, the highest and best use of this property.
Q So how does that highest and best use relate to your final opinion of value?
Well, the highest and best use establishes the use of the property, the best use. nd from there, we make the decision of how the marketplace would value the property. If we're talking about, you know, undeveloped vacant land in this example, that would quickly lead us to most -- you know, and if it is residential, it would lead us to a sales comparison approach, would quickly default to the approach, one of the three approaches that we feel are most appropriate or a combination of the three. So the number crunching and the actual value of the property is subsequent to the highest and best use analysis. We sort of methodically go through, you

know, the process. We've understood the property. We know the characteristics. We know what type of use it should be and then we start the, you know, most appropriate way to value it.

(Continued on the next page.)

Q Can you describe sales comparison approach?

Sure. The sales comparison approach is an effort to simply find like kind properties that have recently transferred in the marketplace and market -- you know, it's the way residential property largely transfers. Market participants put a lot of weight on comparable sales.

Good example would be single-family homes. That marketplace is less concerned with the cost approach and less concerned with the income approach. They're almost entirely locked in and expecting to have their properties valued by way of just similar comparable land sales in this case as best we can find. So we elect to go out to the marketplace and find appropriate comparable sales. There are limitations to that. We try not to stray too far from the market in terms of mileage or distance, radius from the subject site.

We also want to find like kind properties, you know, in terms of size or shape. So it's not always perfect, but we do the best we can trying to obtain a set of sales that best match the subject property.

Q When you say "set of sales" so are you using the final selling price or do you also use listing prices when --

We prefer to use sale prices. Those are closed sales that have been negotiated in the open market. Definitely want to use sales that are not influenced by related parties or anything like that. So we really want to be using open market

transactions that are fairly current and reflective of the current market conditions.

Q By the way, are you familiar with the concept of the subdivision sellout analysis?

Yes, I am.

Q Can you explain your understanding of that analysis?

Sure. That's -- that gets into the work involved valuing a property with subdivision potential or a multi-unit housing project rather than just valuing one individual lot by way of comparable sales. The subdivision analysis takes into account the potential sale of multiple lots or buildings and so there is -- if it's just sellout analysis of vacant land it's merely a model that we develop understanding or projecting out a sales scenario over a time horizon in that wouldn't -- that would develop the general proceeds that a developer might yield by selling each of those lots over a timeline.

During that process there are expenses that the developer would have to incur depending on the particular project. It could be some hard costs to bring the site up to speed, it might be some interest charges and just various expenses that have to be reduced from the gross potential income that they would be receiving by way of the lot sales.

Q nd how do you identify the number of potential lots when you're conducting this analysis?

Well, that's always interesting and critical part of

the analysis. Subdivision analysis has to -- you know, we have to be certain as to the number of lots being sold. You know, that's part of the initial scope of the assignment. We want to gain an understanding of the actual subject property. We do that by various sources, some of which is checking municipalities. But I think the most obvious source would be to go to the owner and, you know, who, again, in most cases know their property better than anyone else and, you know, having a good working relationship with an owner or a client. It's very common to look to the client for specific information about the land and what potential it holds and perhaps what stage it's in in terms of the approval process, which is a very significant part of subdividing land.

Q Really quickly. You mentioned a couple things I wanted to come back to. You were talking about costs and you mentioned gross potential income. Does the subdivision sellout analysis account for time, value of money in a period when you're looking at those factors?

It certainly does. The sellout analysis is typically projected out over a number of years and that's typically you, know, what -- the time that we believe it would take to liquidate all the lots, for example, at a property.

So by going out multiple years we would then be, you know, achieving proceeds over a course of years. We have to factor in the time, value of money. So it's the model is

effectively a discounted cash flow analysis and discounting has to take place. It's a mathematical equation where we discount the proceeds as they, you know, are achieved over the course of the time. So the model takes into account the -- that particular discounting.

So we would have to select a discount rate and then through some modeling in Excel, it develops the net present value of the property on an as-is basis.

Q Can you explain what you mean by "net present value on an as-is basis?"

Well, for example, the -- if one were to do a five-year sellout of a particular number of lots, those gross retail proceeds really don't drop to the bottom line. There is expenses that would have to be incurred and a dollar five years is not worth a dollar today. So there is a discounting process that needs to take place and kind of bring back, reduce that aggregate proceeds value down to a present value and that's what it would be worth for a developer today or an owner.

Q I'd like to move on and show the witness an exhibit marked Plaintiff's 157.

THE COURT: Before you get into that you were asked what is a subdivision sellout analysis. Could that be simplified to determining the value of the current value of property if it's subdivided?

THE WITNESS: Yes.

THE COURT: Okay. There are simple answers in there and there are detailed answers, but thank you.

Q Mr. Mc rdle, do you recognize this document?

Yes, I do.

Q Okay. Can you tell me what this is?

This looks like a setup for our internal administrators recognizing that a letter of engagement has been signed for Trump National Golf Course in Westchester and we're just starting the process of entering into what we call our job center. Clearly, there is a retainer due so we have that engaged. We're looking for our retainer and it's just the early stages of the engagement.

Q Okay. nd here in the subject line it mentions Trump National Golf Course Westchester. It also mentions it's in Briarcliff Manor, New York. I've seen it interchangeably called Westchester and Briarcliff. If I use those interchangeably, would you understand?

Certainly. I've seen it done the same way.

Q Can you direct your attention to -- first to page four of this document really quickly.

You mentioned this was a setup for the engagement letter. Do you recognize this is the attachment for those e-mails? Do you recognize this portion of the exhibit?

Yes, I do.

Q Can you tell me what this is?

So this is the actual engagement letter between Cushman & Wakefield and Sheri Dillon of Bingham McCutchen.

MR. G BER: So I'd like to move this into evidence.

THE COURT: Granted. It's in evidence.

MR. FIELDS: Your Honor, this is -- is this just the engagement agreement or is there anything else that's attached behind the engagement agreement?

THE COURT: Counsel, do you know or can you check?

MR. G BER: It's just the e-mails and the engagement letter.

MR. FIELDS: Okay. Then it's just a statute of limitations objection, Your Honor. Thank you, Your Honor.

THE COURT: Overruled. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 157 in evidence.)

Q Can we go back to page three of this document, Mr. Mc rdle? You'll see an e-mail from you to Eric Trump. It says: "Eric, attached is the revised appraisal proposal totaling $12,500. I hope this works for you and we can move forward. Thank you for the opportunity, Dave."

So you are writing to Eric Trump at this proposal and you describe -- sorry. You are thanking him for the opportunity. Can you tell me what you mean by that?

Yes. The -- yes. The letter of engagement was written

to Counselor Sheri Dillon of Bingham McCutchen. It was widely understood that intended users of this document would also be the Trump Organization, Donald J. Trump, Eric Trump. So in short order after the engagement there were communications with Eric and I about some preliminary steps that we were going to take to get this engagement underway.

Q ll right. So did you understand Eric Trump to be the client in this engagement?

I think he was certainly an extension of the client. The client technically is Sheri Dillon, but in my view she was a representative of the Trump Organization.

Q You mentioned intended users. I think that's on page four of this exhibit, the first page of the engagement letter. That section says "the appraisal estimate would be prepared for Bingham McCutchen LLP and it's intended only for the use specified below. Other intended users are the Trump Organization and Donald J. Trump. The client agrees that there are no other intended users."

Is this what you were referring to a moment ago?

That's correct.

Q Okay. nd so you were saying that you understood Eric Trump to be at least an extension of the client, so it was your understanding that while the formal engagement was with Sheri Dillon that Mr. Trump was ultimately -- Mr. Eric Trump was ultimately your client in performing this work?

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Well, in a practical sense, yes.
Q Okay. Thank you.
I want to note on the first page of this document it says at the top e-mail, "the revised LOE has been uploaded to JC." First of all, what is JC?
JC is job center. That's our administrative program to catalog all the assignments that we bring in.
Q Okay. Can I show you a document that plaintiffs have marked as Exhibit 156?
So if you could, Mr. Mc rdle, just flip through and let me know if you recognize this document. gain, I'll note it's a series of e-mails and then one attachment, which the attachment begins on page four.
Okay. I'm familiar with this document.
Q Can you tell me what this document is?
This is another letter of engagement between the same Sheri Dillon of Bingham McCutchen and similar intended users, the Trump Organization and Donald J. Trump.
MR. G BER: I'd like to move this document into evidence.
MR. ROBERT: Objection, Your Honor. Statute of limitations, also relevancy. nd I want to have a continuing objection to the whole line of questioning as this is all well outside the applicable statute of limitations. We're talking about documents and testimony

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about appraisals that were done in 2013.
THE COURT: Since you're good at repeating things, I'll repeat statute of limitations bars claims, not evidence. I won't go into a whole dissertation now about how evidence could be admissible, but, you know, I did think of a simple example that just sort of came to me.
Let's say a murder or a bank robbery was committed within the statute of limitations. There is evidence, there is a letter from the defendants prior to the statute of limitations saying "I plan to rob the bank." Wouldn't that come in as evidence?
MR. ROBERT: I'm not a criminal practitioner. To me that's apples and oranges here. Here they're trying to allege conduct --
THE COURT: I'm -- I asked you a question. Would that come in, I planned to rob the bank even if it was written before statute of limitations.
MR. ROBERT: I honestly don't know how that would be evidence to prove the crime that a person committed bank robbery that they're being charged with so I would think it wouldn't come in.
THE COURT: Really? "I plan to rob the bank" wouldn't be evidence that you did rob the bank?
MR. ROBERT: I would think it doesn't.
THE COURT: nyway --

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MR. ROBERT: The People would have to prove that particular crime, did the person rob the bank that day.
MR. MER: The G's response is yes.
THE COURT: I'll overrule the objections and let's proceed.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 156 in evidence.)
Q Okay. Mr. Mc rdle, it seems you said that this document, Plaintiff's 156, was a similar engagement. It appears to me that this signature page of this document, document page nine on both of these exhibits is different.
Can you -- do you see the signature page there on page nine here, do you know whose signature that is on the ugust 6, 2013 engagement letter?
It looks Eric Trump.
Q Okay. nd as opposed to on Plaintiff's 157, the ugust 9th engagement letter, the revised engagement letter, the signature page there, if I can direct you to it, signed by Sheri Dillon?
Sheri Dillon.
Q So is it fair to say that the -- and you can look at the two documents and compare that the nature of the revision is to remove Mr. Trump's name and signature from the original letter and replace it with Ms. Dillon and Bingham McCutchen LLP

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as the client in the engagement?
Certainly appears that the ugust 9th signature supercedes the other agreement.
Q Okay. But following up with your testimony from earlier notwithstanding the revision you understood Eric Trump to be a client or the extension of the client in the revised engagement?
I certainly did.
Q Okay. Thank you.
So can you describe the nature of -- and we can put aside 156 and just focus on the engagement represented by the revised letter.
Can you describe the nature of that engagement for me?
That engagement was focused on the valuation of 71 potential attached units within the confines of Trump National Briarcliff Golf Community.
Q nd you looked earlier at an e-mail that you had sent to Eric Trump about this saying "thank you for the opportunity."
Had you discussed the nature and scope of this engagement with Mr. Trump at the time of entering into this engagement letter?
I definitely had conversations with Eric Trump at the very initial stage of engagement.
THE COURT: We should probably use first names because there are several Mr. Trumps.

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MR. G BER: Understood. Thank you. That's a good point.

Q Mr. Mc rdle, if you look at page two of Plaintiff's 157 towards the bottom there, there is an e-mail from Eric Trump to you. He's saying, "Good morning, David." nd then further down he says, "By separate cover, I will send you all the information on the 71 units. Moreover, the dates are critically important to us."

bout those two points there, is it correct that Mr. Trump -- Mr. Eric Trump was planning to send you information about -- well -- withdrawn.

What are the 71 units that Eric Trump is referring to here?

What my understanding is when the Trump Organization purchased and redeveloped the entire golf club property there was significant excess land at the property that had approvals and very advanced stages for the development of semi-detached single-family homes and also an opportunity which you call that low density and they were just attached. You'd have two luxury residences as attached to each other. I believe they were --

Q Duplex?

Duplex, that's another terminology, fair. nd I believe there were about 16 units in total. Those were already built and developed by the time, you know, I arrived and really not a big piece of this equation.

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The 71 units they clearly had a right to develop low-rise luxury townhouse units along the 18th fairway between the fairway and the parking lot of the golf club. So this was an opportunity, sizable opportunity, to develop luxury attached apartments right there on the grounds of the golf club.

Q nd the second sentence there says, "Moreover, the dates are critically important to us."

Do you have an understanding as to why those dates were critically important to Eric Trump?

Well, I think it was obvious they were clearly contemplating a donation, conservation easement donation, and they were looking for my input on valuation of this 71-unit project. To the best of my knowledge the Phase I Friday, September 6th deadline was a verbal report. I believe the second date was the final report hard copy.

Q One last question with this document. t the top of page two you've written, "new assignment for the Mc rdle team." Who is the Mc rdle team?

Mc rdle team is certainly me as the primary team member and I have a couple junior appraisers, licensed, that work for me. One of them is my nephew, Raymond, same last name, Mc rdle.

Q nd then, "Please use Eric Trump as client."

So I think we've discussed this a bit, but you understood Eric Trump or the Trump Organization to be an ultimate client, but is -- you're writing -- I think who is Tina

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Schultheis and Nieves, and Maria Targi here?

They are administrators who manage the booking, the cash, the putting everything in what we call that job center program.

Q So when you say "use Eric Trump as client" are you asking them to use Eric Trump as client in internal --

It's just an internal bookkeeping measure.

Q n internal bookkeeping measure, okay. Thank you.

So Mr. Mc rdle, I'd like to show you a document that plaintiffs have marked as Exhibit 3195. Do you recognize this document?

I recognize it, yes.

Q Thank you.

MR. G BER: I would like to move this document into evidence.

MR. FIELDS: Objection. Statute of limitations.

THE COURT: Overruled. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3195 in evidence.)

Q So can you tell me who Bob Leonard is?

Bob Leonard was an associate at Bingham McCutchen with Sheri Dillon.

Q nd so in this e-mail you're writing to Bob Leonard. You said, "Bob, I spoke with Eric yesterday and agreed to

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perform a discounted cash flow analysis reflecting a build/sellout scenario. We are targeting a 9/20 delivery date. I will speak with you soon, Dave."

So I think you mentioned discounted cash flow analysis earlier. You're saying you agreed with Eric Trump to perform that analysis. This is -- do you remember whose suggestion it was to perform this sort of analysis?

Well, we suggested it when their objective was to value the -- that vacant land with this development potential. You know, as an experienced appraiser this is the right methodology to apply.

Q Did that agreement come up after discussion with Eric Trump about what sort of methodology would be undertaken?

This is a complicated asset, especially when everything is on a proposed basis. So it's very important that we are aligned. You know, the appraiser and the owner or client is very much aligned in the approach. It's fair to Eric, it's fair to me so that there is no surprises at the end and I think everyone agreed that this was the approach to take.

MR. G BER: Okay. I'm going to move on to a document marked Plaintiff's Exhibit 3204.

Q Please take a look at that and tell me if you recognize it.

I do recognize this document.

MR. G BER: I'd like to move this document into

evidence.
MR. FIELDS: Statute of limitations.
THE WITNESS: Overruled. It's in evidence.
MR. G BER: Okay.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3204 in evidence.)
Q Mr. Mc rdle, this is an e-mail from you to Eric Trump. You write to him saying, "Eric, this is a follow up to confirm that you will be providing support from your brokers for the potential pricing of the 71 residential units. We also discussed obtaining input from your construction contractors on the PSF cost to build the project. t this time we are moving forward with the discounted cash flow analysis and look forward to the pricing and cost estimates from your team. Enjoy the weekend."
So you are following up to confirm Mr. Trump is going to provide you with the information described here. Is it normal to seek this sort of information from a client?
Very much so. gain, typically the property owner knows more about his property than we do going in. This was a very specific project that's already approved by the municipalities, so in terms of approvals, it was in a very much advanced stage. s a savvy appraiser, I couldn't help but think they had a tremendous amount of information already in their

files. It's not up to me to guess or speculate as to what could be built here when we know for a fact they -- they're deep into the planning stage.
So -- and with their professional advisors, there could be no better source than to go to the owner, Eric Trump, and try to secure this information, whether it be his pricing forecasts or on the expense side like we talked about before, you know, what's it going to cost to build these. nd eventually that's going to get us, you know, a bottom line number and, you know, the profit potential and kind of gets us those inputs that we may need for this sellout analysis or ultimate discounted cash flow.
Q I'm going to show you a document marked Plaintiff's Exhibit 3196. gain, please take a look at this and tell me if you recognize this.
Yes, I recognize this.
MR. G BER: I'd ask this be moved into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in.
MR. G BER: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3196 in evidence.)
Q So Mr. Mc rdle, this is an e-mail from you to Stephen Olvany. Can you tell me who Stephen Olvany is?

Steven Olvany is a fellow appraiser formerly of Cushman & Wakefield and also a resident of either Westchester or the Greenwich, Connecticut area.
Q nd can you -- can you tell me what you're discussing with Mr. Olvany here?
This is part of our due diligence. s much as I am interested in hearing what the Trump Organization would retail these units at, it's my obligation to go out into the marketplace and do my own research and kind of test the market and gain a good understanding of, you know, what these luxury units would transfer for in the current marketplace.
So Steve I considered a resource. It's commonplace. He's smart guy that, you know, I thought I could lean on for some unbiased market intelligence.
Q So two questions here. Towards the bottom of that long first paragraph it says, "Of course Eric Trump has lofty ideas on value and assumes $1,000 PSF," per square foot "is no problem". First, had Eric Trump communicated his understanding of what the values might be on this property?
Well, during the course of this engagement I did have conversations with Eric Trump. Some of it was about gathering the physical data that we just spoke to, you know, construction costs and building configurations and units and he did a great job of describing the physical nuances of the project and -- but importantly, you know, we ended up speaking about what they

could sell for. nd, you know, Eric loved this project. He thought it was very special. I didn't disagree with him. I think it's a very unique project and it would definitely appeal to the high-end buyer interested in, you know, low rise attached housing with the amenities that this project might offer.
So he shared his thoughts. He thought it was very special and unique. nd at the time that $1,000 per square foot price point was what he thought was reasonable, you know, and I'm perfectly willing to listen. I think it's -- owners are a great source of information, but ultimately, you know, I have to come up with my own conclusions.
Transcript continues on the following page....

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Q Did you have any further discussion with him about the lofty idea of value here?
I think we went back and forth a little bit and, you know, I -- I did my best to try to find like-kind projects that, you know -- where we could understand what those were selling for. You know, I tried to stay in Westchester. It wasn't all that easy. This project was going to definitely be at the top of the residential marketplace for what it is, so we -- I think we reached out down into Nassau County where some of those similar units might be selling. We looked at southern parts of Westchester County and we did the best to gather, again comps, you know, or like-kind properties.
Q Can I show you a document that plaintiffs have marked 3202. nd, please, let me know if you recognize it. It is an e-mail with an attachment beginning on page two of the document, so please look at both if you would.
Yes, I do recall this exchange.
MR. G BER: I'd ask this be moved into evidence.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3202.)
Q So Mr. Mc rdle, it appears Eric Trump is sending you an e-mail saying, " ttached, please find some comps for similar product, type of product in Westchester." He then goes on to

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say, "I suppose further describe the comparables."
But I'll ask you how did you understand Eric Trump's e-mail and the comparables that he sent you?
Well, like I've said a few times this morning, it's important that we gather the best possible set-up data to make a decision on, you know, our final sale price estimate for these units. We looked -- we looked to various source social security. We looked to public record. We looked to comparable source -- comparable databases, our own databases and, you know, we looked to market participants and I was perfectly willing to receive some of Eric Trump's information for me to analyze.
Some of the points he makes here are true and I clearly accept that the amenities at this facility were unique. So I think he was just, you know, showcasing his property in a fair way. You know, this was a very unique project, so it gave me a better understanding of what kind of amenities were there and then it was up to me to absorb this in concert with all the other comparable data that we had, and then again, it is up to me to make that final value estimate.
Q So I am now going to go to an exhibit marked as Plaintiff's 3201. Please take a look at this document and let me know if you recognize it.
Okay. I recall this.
MR. G BER: I ask that this be moved into evidence.

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MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3201.)
Q Mr. Weisselberg, looking to the bottom of the first page of this, there is an e-mail from you to Eric Trump. The header is a little bit cut off, but is this an e-mail to you from Eric Trump at the very bottom of the first page here?
Looks like it is from Eric to me, but it is a little confusing.
Q I think the e-mail from Eric to you is the one that says, "Can you do 330," perhaps?
Right.
Q nd then there's a lower e-mail where it says, "David Mc rdle wrote"?
That, I agree is from me to Eric.
Q It says, "Eric, I am prepared to share my valuation conclusions with you. re you available to talk this afternoon or tomorrow morning."
First off, going back to our discussion from the beginning of this engagement, you had mentioned that Bingham McCutchen, L.L.P. was the formally engaged client, correct?
Correct.
Q But you understand that the Trump Organization and Donald J. Trump were intended users on the engagement letter?

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Correct.
Q nd you understood Eric Trump to also be a client in this matter, correct?
Yes.
Q So you were sharing your valuation conclusions with Eric here understanding that he is a client or related to the client?
Yes. t that time, there was -- it was clear that I could have an open dialog with Eric.
Q nd so what does it mean in appraisal terms, we discussed this I think a bit generally, that you are prepared to share your valuation conclusions with him?
Well, there had been a long process. There were a lot of assumptions and work that we had been performing and I believe this is a lead-up to what may have been phase one in that engagement where it was merely the verbal delivery.
Q re you saying, I'm sorry, this could be shared verbally --
I think that's where we're headed with this, yes.
Q nd then leading up the document, Eric Trump asks, "Can you do 330." nd then one more e-mail up, you say, "Yes, perfect. I will call you." nd then the top e-mail here -- well, putting aside the top e-mail here now because there seems there is a gap in the timing, did you, in fact, speak with Eric Trump on or around September 30th as suggested

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by this e-mail?
I can't be sure if I spoke to him that day.
Q I would like to show you a document marked Plaintiff's 3197. Do you recognize this document?
Yes, I do.
MR. G BER: I'd like to move this into evidence.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3197.)
Q "Bob, the call went well and we are ready to move forward with the written report." I'll note this was sent on October 1, 2013. The last e-mail that we discussed in the previous Exhibit 3201 was dated September 30, 2013. So is -- this is the day after that last e-mail.
Yeah. In reading this e-mail, it certainly suggests that that call took place.
Q So does this refresh your recollection that the call did take place?
Yes, it does.
Q Thank you.
Do you remember what the value conclusion was that you had reached at that point in this engagement?
I think we were getting close and the values were falling in the low 40 millions.

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Q Thank you. I'm going to hand you a document marked Plaintiff's Exhibit 3218. Please take a look and let me know if you recognize it. I saw a nod, but could you please answer whether you recognize it for the record.
I do recognize this.
Q Thank you.
MR. G BER: I ask that that be moved in evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It is in evidence. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3218.)
Q So Mr. Mc rdle, as you can see, there is an e-mail here dated October 1, 2013 from Eric Trump to you. It says, "David, I have one question for you. Do you have a minute to speak at some point today, Eric."
Do you recall whether you spoke with Eric Trump in response to this e-mail?
I don't recall that follow-up phone call.
Q Do you remember -- is there any other recollection you have of whether Eric Trump had a question for -- what question Eric Trump may have had for you, if he did, after the September 30th call?
I do know that he was pursuing me to discuss some issues with the appraisal, but I'm not sure what the content was

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all about.
Q So I'd like to move to Plaintiff's 3197. 3198 then. Please take a look at this and let me know if you recognize it.
(Witness reviewing document.)
Q Do you recognize this?
I do recognize it. I'm sorry.
Q No. It is quite all right.
MR. G BER: I ask that this be moved into evidence.
MR. FIELDS: Statute of limitations, although, the witness has not said what it is, but, nevertheless, that's all the objection is, Your Honor.
THE COURT: He should technically say what it is before I let it into evidence.
MR. G BER: I thought -- okay. I can do that.
Q Do you know what this document is, Mr. Mc rdle?
Yes, I do. It's an e-mail exchange between Bob Leonard and myself.
THE COURT: bout?
Q bout?
bout a dialog pending dialog with Eric Trump.
MR. G BER: I'd like to move into document in evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as

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Plaintiff's Exhibit 3198.)
MR. G BER: Thank you.
Q Mr. Mc rdle, it says, "Bob, I received a VM from Eric yesterday. We need to talk. I am traveling the next Tuesday days. I can call you up until 11:00 a.m. today or after 6:00 p.m. or any time tomorrow is great, Dave."
So this is dated October 15, 2013 and you note the voicemail was yesterday, so that would be the 14th. Do you recall what the voicemail was from Eric Trump?
I don't. I think he wanted to go over some of the assumptions in the model.
Q Do you recall whether you had a talk that day with Mr. Leonard?
I don't recall.
Q So next, I'd like to show you Plaintiff's Exhibit 3199. Please take a look at it and first let me know if you recognize it. Then I'll ask you what it is.
I do recognize the document.
Q Can you describe the document, please?
This is another e-mail exchange between myself and Bob Leonard of Bingham McCutchen.
Q The subject line is "ET," correct?
Correct.
THE COURT: That's the movie, right? ET, phone home.

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MR. G BER: I think the witness needs to answer that, Judge.
Eric Trump.
MR. G BER: I ask that this be moved into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3199.)
Q You write here, "Bob, he continues to call me. I am uncomfortable not replying. Please call him." Who are you referring to here?
Well, I'm talking to -- I'm referring to Eric Trump. Bob and Sherri work closely with us on the many aspects of this appraisal. Eric was sort of on the fringe. We're getting closer to value and, you know, I think Eric was anxious to discuss the assumptions and conclusions one more time and I had been spending more time with Bob and Sherri and I was sort of getting pinched in the middle here and I thought it was good business to reach out to Bob and just say, you know, this is what's going on. I can only hold off so long. I do want to be respectful to Eric Trump. So it was sort of -- we had to decide how to handle the inquiries.
Q You said, "He continues to call me." This is dated October 16th. The previous e-mail we looked at is dated the 15th and refers to a voicemail from the 14th. So over two days,

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did Eric Trump call you multiple times?
I believe it was multiple attempts to get a hold of me.
Q So moving on, I would like to show you what I've marked as Plaintiff's Exhibit 1465. Please take a look at this and let me know if you recognize it.
(Witness reviewing document.)
I'm familiar with that document.
Q You're familiar with this document.
Can you describe what this document is?
These are e-mail exchanges between Bob Leonard and Sherri Dillon of Bingham McCutchen in advance of a call with me regarding some final value conclusions.
MR. G BER: I would ask that this be moved into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1465.)
Q Mr. Mc rdle, could I direct your attention to the second page of this exhibit. There's an e-mail here from Sherri Dillon to you. She starts off saying, "I spoke to Eric and he is aware that the more supportable value at this point is around 45 million."
nd then I would ask that maybe you could explain your understanding of the remainder of what Ms. Dillon is

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communicating to you here.
THE COURT: Five-minute warning.
MR. G BER: Thank you.
Sure. Sherri is acknowledging that, you know, our final value looks to be $45 million for this 71-unit development project. t that point in time, you know, Eric had certain ideas about value. I think they may have been a little more lofty and above 45 million and I think the team of Sherri, Bob and myself clearly recognized that we were sort of at the end here and anything beyond 45 million would have put some people at risk. It would have not been credible. Certainly, I was comfortable with 45 million, but beyond that, I was concerned it would lose credibility.
From an appraisal standpoint, you know, we had great support in there to get us to that value after doing a lot of research and analysis. I think Sherri also is suggesting here that this is going to come under a lot of scrutiny with the IRS or a court and the last thing we want to do is overreach and put Eric in a vulnerable position. So I think this was -- this was a setup to, you know, finally tell Eric that, you know, he should accept this value from the professionals that probably know this better than he.
Q She writes at the bottom, "Eric knows that we have been in touch, but advised he would likely be talking to you this afternoon. I suggest calling him sometime after 4:30 or so."

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nd then going to the first page of the document towards the bottom, your response here is, "Thanks, Sherri. This is a great summary of where we stand and glad we are aligned here. I will speak with Eric."
Do you recall whether you spoke with Eric following this e-mail?
I don't -- I don't recall that conversation.
Q Could I just right before the break, if I could direct you back to 3201 which -- now at the top of the page here, this is dated October 16, 2016, 8:03 p.m. I'll represent that the e-mail from Sherri to you that we just looked at was at 3:45 p.m. So this is an e-mail from Eric Trump to you. It says, "David, per my conversation with Sherri cc'd, please finish, but hold off on sending the appraisal until further notice. I'm happy to discuss any time."
Were you told why you should hold off on sending the appraisal?
I was not told to hold off. These engagements had a lot of stops and starts with attorneys involved. I just assumed it was, you know, they had their reason and I was perfectly fine, you know, abiding about by that.
Q I believe -- can I just -- I believe that you said I was not told to hold off. So just if I could ask again, were you told why you should hold off on sending the appraisal as it is indicated by Eric Trump in this e-mail?

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No, I was not told why to hold off.
MR. G BER: We can take a break.
THE COURT: Okay. Lunch break. See you all at 2:15.
(Witness exits the stand.)
(Whereupon, a luncheon recess was taken.)
F TERNOON SESSION
* * * * *
THE OFFICER: ll rise. Part 37 is back in session. The Honorable rthur Engoron presiding. Please be seated and come to order.
THE COURT: Let's get the witness.
THE COURT OFFICER: Witness entering.
(Witness resumes the stand.)
THE COURT: Let's continue with the direct examination of Mr. Mc rdle and I'll remind the witness, as I always do, that he's still under oath.
THE WITNESS: Thank you.
THE COURT: Please proceed.
Q Good afternoon, Mr. Mc rdle. I would like to just go back to Plaintiff's Exhibit 3201 that we were looking at just to clarify the record. "David, per my conversation with Sherri cc'd, please finish but hold off on sending the appraisal until further notice."
What is your understanding of the request being

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conveyed hereby Mr. Trump, Eric Trump?
I believe he's just confirming that -- to complete the assignment at the roughly $45 million value that was discussed earlier. I don't think we were sending anything. It was verbal at that point.
Q nd were you told why you should hold off?
No, I was not told why.
Q So I would like to move to Plaintiff's Exhibit 158.
Mr. Mc rdle, I ask that you please look at this document and tell me if you -- if you recognize it. I'll note then, again, that this is an e-mail with an attachment beginning on page six of the exhibit.
(Witness reviewing document.)
Yes, I'm familiar with the e-mail and document attached.
Q Can you describe what they are?
Sure. The first page on the screen right now is, again, an internal set up at Cushman & Wakefield recognizing that I re-engaged with -- it is Sherri Dillon at Bingham McCutchen with the Trump Organization as an intended user. The engagement letter follows and in great detail outlines the scope of the assignment. This is the same property in Briarcliff within the country club confines and it is merely a request for a formal written appraisal related to a definite conservation easement or donation to the federal government for tax purposes.

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Q This letter is dated February 14th, Valentine's Day, 2014. The previous e-mail we just looked at was dated October 16, 2013. You said", I believe that this was similar scope to the previous engagement," but this was successive. Did you understand this to be a continuation of that engagement?
I don't understand -- I don't recall the time lapse. Is that what you mean?
Q It's a few months after the previous engagement --
Correct.
Q -- correct?
Correct.
Q nd so did you understand this to be -- you said it was the same scope as well?
Yes, I did.
Q Did you understand this to be a continuation of the earlier engagement?
Very much so.
Q Looking at page six here, you had mentioned that the intended user was the Trump Organization. re there any other intended users of the appraisal under the engagement?
Donald J. Trump.
Q Thank you. Can we, Mr. Mc rdle, go to page seven of this document where it says, "general scope of work." Can you tell me what is to be valued under this scope of work?
Yes. The property is being valued under this scope of

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work is the same 71-unit attached housing project that we had been previously discussing, but it also includes the adjacent 18-hole golf club known as Trump National Golf Club Westchester, and it also owns -- includes a town home owned by Eric Trump on the perimeter of the property.
Q Do you understand why the scope is expanded between this and the previous engagement?
Yes, I do. It was explained to me by Sherri Dillon that when a donation is being contemplated, there's also an obligation to understand the positive or negative impact on other properties the donor may own that are nearby. So it is pertinent that the value of the golf club and the town home are understood and we had to then towards the end of the assignment make a determination if any additional value or loss of value or neutral situation developed once that donation took place because there is a calculation that, you know, the IRS requires.
MR. G BER: I'd like to move this in evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 158.)
Q So moving forward, I'm going to hand you a document marked Plaintiff's Exhibit 159. Please read it and let me know if you recognize this document.
(Witness reviewing document.)

Yes, I do recall this e-mail.
Q Can you describe what that e-mail is?
Sure. This is an e-mail to my colleague at Cushman & Wakefield who's another golf expert. His name is Richard Zbranek. He also is involved in what we call QC and that is quality control. Before we send any documents out the door to clients, we have a quality control process that requires a capable senior colleague appraiser to read our reports just as a safeguard, make sure we didn't make any errors and make sure methodology and all the -- the report is sound.
So this is my e-mail to Rick explaining the upcoming QC relative to this appraisal that we're performing for the client. nd, you know, I elaborated on the nuances since it was something a little bit different in that it was a -- an appraisal done for a conservation easement donation.
Q So the last two sentences of this e-mail say, "Let me know what you think. It will be scrutinized by Sherri Dillon, Eric Trump and the IRS". Can you explain what you meant by this?
Sure. Rick is a very trusted colleague with deep, deep understanding of -- he is an M I, deep understanding of this type of valuation particularly as it relates to golf and some residential development. I'm looking for him. I'm leaning on him for advice and just, you know, an assurance that we are putting out the right product.

I mean, we're very conscientious and Cushman & Wakefield takes these very, very seriously and recognizing we have high-profile clients and we also have the IRS involved. We did everything we could to put out a very credible, sound report to the best of our ability.
Q nd it was your understanding by this, then, that Eric Trump would be, as you say, scrutinizing the appraisal report notwithstanding the fact that he wasn't the formally engaged client.
s the assignment played out, it was clear that Eric was active in the -- through the process and I thought it was fair to let Rick know that, you know, he's actively involved as an intended user.
(Continued on the next page.)

MR. G BER: I'd like to move this document into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 159 in evidence.)
Q So Mr. Mc rdle, that e-mail is dated pril 22, 2014. I just wanted to keep that date in mind as I hand you Plaintiff's Exhibit 3194. This is -- again, it's an e-mail with the included attachment, so please take a look at this and let me know if you recognize it.
Yes, I do recognize this document.
Q Can you describe what this is?
This is the actual written report that we ultimately submitted to Sheri Dillon at Bingham McCutchen. It contains the valuation of the 71-unit residential development site. It also contains the final value of the golf course by itself, country club and it also includes the single-family residence of Eric Trump also on the property.
Q nd this cover e-mail, you're transmitting it to Sheri Dillon and Nick Zemil and you bcc Tina Schultheis. So is this your delivery of the report to the client?
This is our physical delivery of the report to the client.

Q Okay.
MR. G BER: I'd ask this be moved into evidence.
MR. FIELDS: Objection. Not only statute of limitations, but also hearsay and relevance as to the attached report. The report's being offered for its truth. The Court has now heard testimony as recent as of yesterday that developers can value their own properties the way they see fit. It doesn't have to be what an appraised value is. The Court has also heard testimony about accounting in S C 274 and therefore it's offered for its truth. It is hearsay and irrelevant.
MR. G BER: I don't think I offered the report for its truth.
THE COURT: Well, let me ask you. For what purpose are you offering the document?
MR. G BER: Primary -- I'm offering this for notice, but also to show this is the work product for Cushman & Wakefield prepared according to procedures that Mr. Mc rdle has outlined using inputs and data that he received from the client and other sources. These are business records of Cushman & Wakefield and to the extent there is information in here that came from defendants, then those are admissions as well.
THE COURT: Objection overruled.
MR. FIELDS: May I respond?

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THE COURT: Sure, yes.
MR. FIELDS: First of all, in terms of it being a business record, that protects the document but not statements within the document. The notice would be -- I guess the question is notice to whom and of what. The direct -- the witness can answer that he did an appraisal and what the appraised value was, but the entirety of the document contains a ton of hearsay and there is no need -- there hasn't been a foundation laid for who needs to have notice and what the notice is for and so respectfully, I think it's being offered for its truth and it's hearsay.
THE COURT: The document is the notice. What the document contains and what's in it is the -- is the notice as being conveyed, right?
MR. FIELDS: But, Your Honor, notice to whom and of what is the question.
THE COURT: Mr. Gaber, you want to answer that?
MR. G BER: In the first instance formally, this is notice to Bingham and McCutchen LLP, the engagement letter does list the Trump Organization and Donald J. Trump as intended users, but Bingham McCutchen was a retained counsel for the Trump Organization. They are an agent of the Trump Organization. Knowledge of the agent is imputed to the principal. This is something that was involved in litigation in the special proceeding pursuing this action as

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well. So I think the notice should be as against the Trump Organization in addition to notice to their agent directly.
MR. ROBERT: If it's being introduced for notice and I'll leave that for a second, but if it's being introduced for the truth of the matter asserted, I agree with my colleague that it's hearsay. nd to the extent that the government wants to say that they're admissions, what are the admissions inside and who are they attributed to? There are multiple defendants here. I don't know what sentence or what statement within goes in there that constitute an admission and respectfully, I think allowing a document of that magnitude to come into evidence for the truth of the matter asserted and/or to constitute an admission we need to know what they're attributing to whom.
THE COURT: Let's -- maybe this is going back.
MR. G BER: I can ask some questions.
THE COURT: Let me just ask. re you introducing it to prove the truth of its contents?
MR. G BER: re you asking if I am introducing it to prove the --
THE COURT: I think that's basically the question at hand.
MR. G BER: No. I'm introducing it to show that that that value conclusion was one that was reached after a process as outlined within the appraisal report and, you

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know, the -- you as the factfinder can weigh that against other evidence.
THE COURT: We can't have a trial over every single defendant, whether it's 12, 15 as to, you know, what it can be used for. You'll have plenty of time to discuss that.
MR. ROBERT: Well, Your Honor, respectfully, we do think it's important because there are multiple defendants here and as to who is ultimately potentially responsible for what. The witness testified very competently as to his process and what went into it, but again, to suggest that this document is going to constitute some sort of an admission, if we can agree that it's notice or it's the fact that this gentleman prepared the appraisal itself, I don't think there is any dispute about that. If you want to ask him what the final value was, he can testify to that, that's fine. But as far as the document itself, we would respectfully submit that the physical appraisal itself is inadmissible hearsay other than potentially for notice.
MR. G BER: I mean, I thought post-trial briefs were due at the end of the trial.
THE COURT: That's just going to have to be resolved later.
I do want to respond to something Mr. Fields said.
Yesterday, there was some testimony that an owner can reach -- conclude whatever value they want. Yes, in the

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abstract. If you own a house, you can say it's worth a hundred thousand dollars or a million dollars, but that doesn't really prove much one way or the other. So it's in except for the truth of its contents. Let's move on.
Q Mr. Mc rdle, can I direct your attention to page four of this document? This one's double sided.
In the first instance the final column under " djusted Value of Conservation Easement" reading across from the row there it says "final value conclusion of conservation of easement, $43,300,000." What does this number represent?
That number -- well, that number represents the value of the conservation easement donation. It accounts for before and after, looks at the two other components we discussed, the golf club and the townhouse. In both cases we analyzed the impact on those two other components and concluded that by building that building, that asset, you would have neutral impact on both values. So it wasn't -- neither property gained from it or neither property would have lost value from it. Therefore, the before value of 43 million ends up being the same 43 million, you know, final value contribution.
Q nd just for my clarification, the before and after -- the before and after is the -- are you gauging the impact of the conservation easement donation on the townhouse and golf club? Is that the idea?
That's exactly right.

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Q Okay. So if they donate this -- this part -- this land as a conservation easement, then is the value of the golf club impacted by virtue of that donation?

That's correct.

Q Okay. Thank you.

Exactly.

Q nd so the before and after values of the golf club there, it says -- well, could you just tell me what the before and after values of the golf club are that you came to?

Sure. bsent the before value for the golf club is 16,500,000 and after the donation we maintain the same 16-5; in other words, no impact on value.

Q Okay. nd I see there is some -- above the "final conclusion" -- "final value conclusion of golf club" row there is a row that says "sales comparison approach" and a row that says "income capitalization approach discounted cash flow."

Can you explain what's being represented here?

Certainly. For -- in our view, the country club needed two approaches to value. It wasn't just a one-prong method. nd this is pretty much standard in our industry. We deem the sales comparison approach and the income capitalization approach as the two most applicable approaches to value.

Sales comparison approach is merely a comparison of other country -- golf and country clubs, preferably in, you know, in the local area and we compare them just like you would

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single-family homes, you know, it's an adjust -- percentage adjustment analysis, sometimes a qualitative analysis.

We're just kind of testing the market as to what other clubs are selling for and we -- ultimately, we make a conclusion there. Typically it's on a per whole basis. So we were comfortable with 16-5 from that approach.

nd then the more detailed approach is the income capitalization approach. nd, again, we use a discounted cash flow there and that analysis is more, you know, income and expense oriented. We literally look at the operations of the country club and by that I mean, you know, revenues secured through dues and initiation fees and food and beverage, some of those big, big income lines and then we reduce it by operating expenses.

Typically the larger categories would be clubhouse expenses, the food and beverage expenses, course maintenance expenses and we project out number of years, usually five, and we run a discounted cash flow analysis on that pro forma and this accounts for all the membership flows in and out. We're looking at membership trends coming in, going out, all the fees that they pay going in daily fees, greens fees, catering food, beverage and then typically there is a matching expense, departmental expense.

nd like I said, it's a DCF we forecast out about five years, develop an NOI for each of those five years and then

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discount it back by a market oriented discount rate.

Q nd the inputs for that income capitalization approach that you just mentioned, the revenues and the costs, you get those numbers -- who do you get those numbers from?

I got those numbers from the Trump Organization. They have to be property specific. This is isn't something we can just estimate. Every club is unique in itself, so I was provided financial information.

gain, we typically look for the major, you know, revenue sources where they're coming from. nd again, it's initiation fees, it's membership dues, various other smaller income lines and we take a hard look at it and again apply the expenses to it, just try to get comfortable with forecasting going forward.

Q Can I direct your attention to page 25 of this document? So here this is apart of the introduction under "Scope of Work." The last paragraph is where I want to draw your focus to.

It says, the first sentence, that "this appraisal employs the sales comparison approach and the income capitalization approach," which you just discussed to me.

But I want to go to the sentence starting with "therefore" here in the middle of the paragraph.

So it says, "therefore, we have not utilized the cost approach to develop an opinion of market value. More

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specifically, we utilize the sales comparison approach and the income capitalization approach for both the conservation easement valuation and the golf club valuation."

Can you tell me why you -- oh, I'm sorry. In the preceding sentence, forgive me, says "typical purchasers do not generally rely on the cost approach when purchasing such a property as the subject of this report."

So can you understand or can you tell me your understanding of this language here?

Sure. The cost approach is one of three widely recognized approaches to value in the appraisal industry.

The cost approach is effective for certain properties; others, not so much. Golf and country clubs are really in our view not suitable for the cost approach. There is a number of reasons cost approach requires an underlying land value. It also requires very subjective calls for building costs and then associated rates of depreciation for all various components of a golf course, which is a very wide mix. So it's -- there is a lot of sensitivity there that kind of, you know, weakens the approach. But probably the biggest driver is that we try to follow market behavior.

I don't invent approaches. It's -- appraisers want to parallel the market and we're not making the market. We're really following the market and watching the behavior of market participants, buyers and sellers of golf courses.

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We know for a fact buyers and sellers of golf courses do not utilize the cost approach for various reasons, so it's very fair to limit that approach and in this case we eliminated the cost approach.

MR. G BER: Thank you.

Q So going back to the top of this document. I think as we discussed this is an e-mail to Bingham McCutchen delivering this draft appraisal in pril of 2014.

Can you tell me what happened after you delivered this draft appraisal?

To the best of my knowledge things went rather silent. I don't believe there was much communication beyond.

Q Did you ever issue a final appraisal report?

No, we did not. We did not issue a final.

Q One more question about cost approach.

Sure.

Q Would you say that's synonymous with a fixed cost approach?

I'm not familiar with that exact -- it's appraisal terminology.

Q It's not appraisal terminology?

Not really, no.

Q That's fine.

So if I could now draw your attention to Plaintiff's Exhibit 132, and please take a look at this document and tell me

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if you recognize it.

Yes, I am familiar with it.

Q Can you tell me what this document is?

Excuse?

Q Can you tell me what this document is?

This is another letter of engagement between Cushman & Wakefield's Valuation Group and in this case Eric Trump and the Trump Briarcliff Manor Development LLC as client.

MR. G BER: I'd like to move this document into evidence.

MR. FIELDS: Statute of limitations.

THE COURT: Overruled. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 132 in evidence.)

Q You mentioned that this is with Eric Trump as client. So in this case Mr. Eric Trump was your client for this engagement?

That is correct.

Q But the engagement relates to the same property that we were just discussing in the last pril engagement?

That is correct.

Q nd the intended use here under the engagement letter, it says "to document the value of a conservation easement placed on a parcel of land for federal and state income tax purposes."

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Is that similar to the previous engagement's scope?

Yes. I think all the engagements were headed towards this direction. They were contemplating this conservation easement donation and this is one of the final requests.

MR. G BER: If we turn to page two of this document. nd maybe we can put that up side by side with page seven of Plaintiff's 158.

Q I just want to ask you towards the bottom of the paragraph beginning with "client intends," it appears that there is some difference in the scope of work here, but I was hoping that you could read these two scopes of work and explain to me what, if anything, is different between the Eric Trump engagement and the Bingham McCutchen engagement?

Which is the Eric Trump engagement? Is it the one on the left?

Q Yes.

Okay. Well, clearly, the language is slightly different. I do know that with Eric Trump's engagement, the one on the left, we were getting much closer to the donation. Sheri Dillon was involved with some guidance on the nuances and content that the IRS would be looking for and I knew -- I know he did spend some time on real specific language that needed to be in these documents for it to comply to the IRS's regulations, so.

Q So the document on the left, which is the later

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engagement with Eric Trump, it says, "The appraisal will also determine the enhancement, if any, to the value of any other property owned by the client," dot, dot, dot, "specifically" and it lists the golf club and the town home.

Is this different than the prior engagement which said that it would determine the value of any other property? So on one hand determine the enhancement to the value versus determine the value?

Yes, that's a great point, and that did come up through our work with the two clients. There was some confusion over whether or not the golf course and town homes had to be valued individually or whether it was a matter of just defining any impact on value, up or down. I.

Think at the end of the day, if my memory serves me, we concluded that we did not have to specifically value the country club or the townhouse for the final submission, so you make a great point. I think that's what they were driving towards there.

Q Can you turn towards page six of the Ladder engagement letter? That signature there, do you recognize that signature? Who signed it?

Eric Trump.

Q Thank you.

I'm going to hand you, Mr. Mc rdle, Plaintiff's Exhibit 3217, and ask you to familiarize yourself with it and

tell me if you recognize the document.
I do recognize the document.
Q Can you tell me what it is?
This is a document pertaining to the same topic. It is an appraisal of the conservation easement, 71 units and this references to the adjacent properties we've been discussing, the golf course and the town home.
MR. G BER: I'd ask that this be moved into evidence.
MR. FIELDS: To preserve the record, same here standing statute of limitations objection.
THE COURT: Overruled. It's in evidence.
MR. G BER: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3217 in evidence.)
Q Mr. Mc rdle, on page five of this document where your signature would be, it says "draft" there. Is this a draft appraisal?
Yes, it is.
Q Do you know if a final appraisal report was ever issued under this engagement?
I don't believe it was ever issued.
MR. G BER: Can we go to page four of this document?

Q So here under "market value of conservation easement" it says $43,300,000. I believe that's the same value that you placed on the conservation -- for the conservation easement in the prior appraisal draft; is that correct?
That's correct.
Q Okay. But then going up here, the table -- I think it's called the final value of reconciliation is slightly different than the previous engagement. Is that due to the difference in the scope of work we discussed?
That's exactly right. The presentation -- I mean, as they went through this process they were trying to conform to the rigorous standards of the IRS in understanding exactly the content that was required. Sheri Dillon determined that once again we did not have to define the values of the golf club townhouse. It would merely be a presentation where whether or not the -- whether or not they gained value or lost value. So there is no impact to those assets and that's why they were zeroed out.
Q Can we go to page 16, please? So the second to last paragraph on this scope of work section of the introduction it begins with "because data on comparable sales." nd I wanted to draw your attention towards the middle of the paragraph.
gain, it says "typical purchasers do not generally rely on the cost approach when purchasing a property such as the parcel. Therefore, we have not utilized the cost approach to

develop an opinion of market value. More specifically, we utilized the income capitalization approach and the sales comparison approach in connection with the before and after method for the conservation easement valuation."
We looked at similar language I believe in the prior appraisal report. Is this expressing a similar -- or can you tell me your understanding of this language in this appraisal report?
This part of the scope remains the same for the same reason I previously reported. Full-blown cost approach would not be appropriate here, so it was merely carried into this document as it was in the other for the same exact reason. Buyers and sellers, you know, would not be looking at a traditional cost approach for these assets.
Q So despite the fact that you're not -- the difference in the presentation of the value conclusion we just discussed between the two letters or two appraisal reports, one of them valuing the townhouse and the golf club; the other one valuing the change in value to the townhouse and golf club. So in this case were you valuing the change in value to the townhouse and golf club. re you still -- are you still looking at the value of those using the income capitalization and sales approach?
Yes, I'm still maintaining those same approaches.
Q So the same -- is it fair to say that the same analysis is done in both despite the change in the scope of work language

that we discussed?
Yes, it is safe to say that.
Q nd so this draft appraisal is addressed to Mr. Eric Trump, you e-mailed it to Ms. Dillon. Is it your understanding that Mr. Eric Trump received this draft appraisal report?
Yes. I'm quite sure he was aware that I was sharing it with Sheri Dillon. We were very careful about that the exchanges and they were working hand in hand, so I believe that's why it was sent to her.
Q Okay. So at this point, Mr. Mc rdle, we've seen two examples where you had an initial engagement that was prepared with Ms. Dillon's firm as the sort of formal client on the engagement letter and then a subsequent engagement letter for the same type of engagement or thereabouts with Mr. Eric Trump listed as the client?
MR. ROBERT: Objection.
THE COURT: Let's hear it.
MR. ROBERT: Mischaracterizes the evidence. The testimony has been internally. They referred to as Eric Trump as the client, but documents clearly say who the client was. In this last one, it was the Briarcliff entity signed by Eric Trump.
Plaintiff's Exhibit 132, "Client, Trump Briarcliff Manor Development LLC" and it was signed by Eric Trump as executive vice president. So the client was not Eric Trump.

The question keeps saying "your client Eric Trump, your client Eric Trump." So if he wants to change that because the document in evidence is clear as to who the client is.

THE COURT: Would you like to dispute that or agree with that?

MR. G BER: Mr. Mc rdle has testified that he understood Eric Trump to be his client for all of these engagements and in some sense it's a distinction, not a difference. It's his understanding. He worked with Mr. Trump. He's testified to that.

MR. ROBERT: I believe the testimony was internally when the first billing set of e-mails came in it was the -- internally to Eric Trump as the client, but clearly when Cushman & Wakefield enters into an engagement letter there is a specific client.

MR. G BER: That was not the testimony, Mr. Robert. He actually -- the internally, yes, but also beyond that he said he understood Eric Trump to be his client on these engagements.

THE COURT: Objection overruled on the ground just stated, but I understand the point, as usual.

Q So I just want to ask you if it is a standard practice for the appraisal work that you performed for the Trump Organization and their counsel to have this first appraisal, second appraisal like you just described.

It was a -- for the work we did for them, it was the pattern, yes.

Q Do you have an understanding as to why that was?

My understanding was confidentiality.

Q Can you elaborate on that?

I'm not well versed in the legal reasons for doing it, but clearly it was involving confidentiality.

Q I'm just -- I don't need you to give a legal response. When you say "confidentiality," what do you as a layperson mean by that or what do you understand by that, if you have an understanding of it?

Well, we've seen -- I've seen other attorneys do it to try to keep a distance between the law firm and their client, potential owner, let's say.

Q Thank you.

I'll move on to Plaintiff's Exhibit 134. I'll hand this to you and ask you if you recognize it.

Yes, I do recognize it as another engagement letter between Eric Trump and Trump Briarfield -- Briarcliff Manor Development LLC and my firm Cushman & Wakefield.

Transcript continues on the following page...

MR. G BER: I'd ask this be moved into evidence.

MR. FIELDS: Statute of limitations.

THE COURT: Overruled. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 134.)

Q Mr. Mc rdle, this is dated June 3, 2015 nearly one year after the June 23, 2014 engagement letter that we just looked at that was marked as Plaintiff's Exhibit 132. Can you take a look at this document and tell me what you understand the scope of work of this engagement to be? If you'd like, I could put them up side by side if it is easier for you to compare.

Yeah. This engagement looks to be very parallel to the one a year ago encompassing the same real property components to be valued for the conservation easement and clearly, there's been a passage of time, but it appears to be very much the same scope.

Q On page six of this document, is that your signature there?

That is my signature.

Q nd do you know whose signature that is below?

I really don't.

Q But it says, "Executive Vice President Development and cquisitions for Trump Briarcliff Manor Development, L.L.C."?

I don't recognize this signature.

Q That's fine, but you see where it says, "executive vice

president"?

I do, certainly.

Q re you aware -- I believe Mr. Robert just told us that Eric Trump was the -- recognize the signature of Donald Trump Jr.?

No.

Q re you aware of whether Trump Briarcliff Manor, L.L.C had any executive vice presidents other than Eric Trump?

No, I'm not.

Q So at this time, I would like to hand you Plaintiff's Exhibit 910.

MR. G BER: I'd like to move to admit Plaintiff's 134 into evidence. Oh, I did.

MR. FIELDS: Statute of limitations.

THE COURT: Overruled. It is in evidence.

I am aware of the e-mail. I'm familiar with the e-mail and the accompanying appraisal product that we delivered.

Q ppraisal product for which property?

This is again the same Briarcliff Manor assets involved in the conservation easement donation.

MR. G BER: I'd ask that this be moved into evidence.

MR. FIELDS: Same objection; statute of limitations.

THE COURT: Same overruling. It's in evidence.

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Q On page four of this document, the date here is September 1, 2015, as of September 1, 2015. The e-mail is dated ugust 28, 2015. Is it common to date a report differently than the date of its transmission?

That September 1st should be the date of value, the September 1st.

Q Okay.

THE COURT: That doesn't answer the question at all. Do you care?

MR. G BER: I was tripped up by my microphone turning itself off.

THE COURT: The question was whether it was common for the date to be the same --

MR. G BER: You're getting ahead of me, Judge. I'm happy to let you finish up the exam.

THE COURT: I will defer to you.

MR. G BER: Thank you.

Q I think the judge said it best, but is it common for the date of value to be different than the transmission date of appraisal?

Yes, it is very common.

Q On page five of this document, can you describe what this letter is on page five?

This is called the letter of transmittals outlining the clients involved. It's simply a letter explaining the

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engagement, some of the nuance, some of the regulations we're following; certainly, a brief summary of the scope, the project at hand. In this case, outlining the components of the real estate and then it goes on to give some detail on the process, the scope and our appraisal process itself.

Q Looking at page six, you see a table here, "valuation summary." It looks slightly different than the value reconciliation I think that we saw on the last draft. Can you explain what this is here or what this table represents?

gain, the presentation that the Trump Organization attorney Sherri Dillon was fluid. They were making a concerted effort to make sure they adhered to all of the IRS guidelines and, you know, that was challenging. It is a lot of red tape and, you know, there were some suggestions on the presentation. I was comfortable with it. The values were consistent and it all seemed reasonable to me, so we kind of crafted a summary that was a little more conforming to IRS requests and guidelines.

Q nd again, because the presentation is slightly different here, row D says, "Less value enhancement to non-TBMD holdings with a triple asterisk," that following it down says, " fter condition property value reflects any value enhancement to golf club or Eric trumps townhome." Can you just explain what this means?

That's simply what we talked about before. We had to

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make a determination if there would be any positive of value improvement or detraction to value with the 71 units next door. So we did a thorough analysis and weighed all the pluses and minuses and at the end of the day, we believed it was -- had a neutral impact.

Q Different presentation just in terms of the table, but same analysis?

Yes.

Q Can we go to page 17 really quickly. So the second to last paragraph again, middle of the paragraph, is the sentence, "Typical purchasers do not generally rely on the cost approach when purchasing a property such as the parcel as a building cost analysis is not normally applicable for a vacant land valuation."

This is slightly different than the previous draft appraisal. Do you understand this sentence to have also taken into account the same analysis regarding country clubs and golf clubs that you described with the previous two?

Looks like the terminology is slightly different, but it gets to the same point. We're just explaining that it's just not -- the cost approach is just not applicable for this appraisal.

Q Is that because of the golf club component?

Yes.

THE COURT: Five-minute warning.

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MR. G BER: Maybe we should -- can we take a break later or sooner?

THE COURT: It doesn't really matter, five or ten minutes.

MR. G BER: If we could break now.

THE COURT: It is very easy to calculate. We will be back at 3:30. Okay, break time.

(Witness exits the stand.)

(Whereupon, a recess was taken.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: I guess we should start with the plaintiff. What do you intend to do with whom and when?

MR. MER: I think it's clear that we will not get to our next witness today because we have at least another half-hour with this witness and then there's cross-examination.

THE COURT: Will there be cross?

MR. ROBERT: Half-hour or so. Nothing extensive.

THE COURT: Not enough for another witness.

MR. MER: So the next witness is Mr. Flores, he is actually here. We were going to tell him he could leave for the day.

THE COURT: ll agreed? Yeah.

MR. MER: I think realistically he will be the

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entire morning. We could start him even first thing tomorrow morning because I probably have -- well, I would say I have an hour and-a-half or so, maybe two hours with Mr. Flores. Is it okay if we end when he ends? We could play a video if we need to, but --

MR. ROBERT: That works with us. We just don't want to have people wasting time. That's fine. I just want to know where we are on Monday. On Tuesday, we have Kelly first and then Cohen second?

MS. GREENFIELD: re you going to have any cross on Mr. Flores?

MR. ROBERT: No. We are going to call him back on our case if we need to.

MR. MER: I prefer to not have to start something without finishing it over the weekend if, for example, Ms. Mouradian's video. I think it makes sense to do Mr. Flores tomorrow and whenever we're done, we're done.

MR. ROBERT: That's fine. Just for clarity, though, Tuesday we have blocked out Kelly first and then Cohen. Who is on the deck for Monday, so we can prepare?

MS. F HERTY: We will e-mail you.

MR. ROBERT: s long as we know by tomorrow morning to prepare for Monday, that's fine.

THE COURT: Bring him in.

THE WITNESS: Witness entering.

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THE COURT: Okay, let's continue with the direct of Mr. Mc rdle.

Q Welcome back, Mr. Mc rdle. I'd like to move on to discuss a 2014 consulting engagement for the Seven Springs Estate. Do you recall that engagement?

I do recall that engagement.

Q I am handing you 131. I ask you to review it and let me know if you recognize it.

(Witness reviewing document.)

So I do recognize these documents. The first document, again, is an interoffice e-mail between myself and the administrators recognizing that we have a new engagement underway with Sherri Dillon of Vinson & Elkins. Ms. Dillon shifted law firms, so it is the same individual. She's now affiliated with a new firm. The engagement involves consulting services at another Trump property identified as Seven Springs Estate.

MR. G BER: I'd ask that this be moved into evidence.

MR. FIELDS: Statute of limitations.

THE COURT: Overruled.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 131.)

Q So Mr. Mc rdle, I would like to direct your attention to page three of this document. So first off, the previous

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engagement letters that we have seen were on Cushman & Wakefield letterhead. This one is on Vinson & Elkins letterhead. What do you understand by that difference?

We can engage with clients either way. There's no hard and fast rule on which party provides the engagement letter. Our large corporate clients provide their own. For smaller clients, we take the liberty of drafting it and they appreciate that. So this was a shift from previous practices working with Ms. Dillon, but it was not something that we found objectionable, and we let her craft the engagement letter. Of course, we scrutinized it, approved it, and I ultimately signed on.

Q The first sentence here, it says, "Dear Dave, we are pleased to confirm the engagement of Cushman & Wakefield, Inc. C&W by Vinson & Elkins, LLP or the client in its capacity as legal counsel for Seven Springs, L.L.C, the owner of the Seven Springs estate."

How did you understand that Vinson & Elkins was acting as legal counsel for Seven Springs, LLC?

Well, much like other engagements with Sherri Dillon and her law firms, it was obvious to me that it was a similar arrangement where Sherri Dillon would act as a representative of one of the Trump entities in this initial engagement.

Q Go to the next sentence. It says, "This engagement effective as of June 17, 2014 is to provide consulting services

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related to an analysis of the estimated value of a potential conservation easement on all or part of the Seven Springs estate."

What do you understand by "provide consulting services related to an analysis of estimated value "here?

This assignment was described to me as a very preliminary effort with our assistance to further understand the potential value of the lots that were being subdivided on this 200-plus acre estate that were surrounded by two substantial single-family residences. So this was a -- this was a land valuation. That's the way we would -- went into understanding it.

Q So following your formal engagement by this letter, can you describe the process that you undertook in beginning your work to fulfill the terms of the engagement and perform the analysis you just described?

Sure. Recognizing this was another very large, unique trophy asset owned by the Trump Organization or an entity thereof, it was very important for us to get our arms around exactly what are we appraising, exactly what is the status of it legally, wanted to take a deep dive into physical characteristics. So I had a lot of questions in the beginning, very important that I view the site, so we did all sorts of early maneuverings for me to take a speed course on this property which was so important to me. So I did visit the

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property. I was escorted around and I started to, you know, gain a good understanding of the asset itself and what their objective was.

This was a pending subdivision with a lot of moving parts. So in addition to physically looking at the property, there are a lot of behind-the-scenes data that I had to confirm that would play into preparing the credible appraisal report.

Q Was Eric Trump involved in this kind of early information-gathering phase that you just described?

He was.

Q Can you describe his involvement?

Yes. I think Eric assisted in giving me an overview of the property, its history, some of the locational attributes, some of the nuances, some of the, you know, high points, if you will. Ultimately, he did share some data with me or pointed me to the right professional to confirm some important data.

Q Can you speak more to the nature of that data? t a high level is fine?

Sure. s an appraiser doing a residential subdivision that is fluid and not approved, it was critical that I quickly grab hold of the map, as we call it, you know, and so I wanted to understand the layout, you know, from like a survey perspective and understand the configuration of all the lots that would be ultimately approved at the site because this was going to be -- the request was to value the lots on a retail

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level, if you will, just to -- in other words, what you would sell them to an end user for. It was more of an exercise of selling the lots to individual homeowners.

Q So did Eric Trump -- you discussed previously in this that you often undertook a comparable sales analysis in these valuations?

You know, the scope of the appraisal assignment was to value these lots on a retail level and give the client a sense of what they would sell for individually and also on -- in an aggregate value. This type of appraisal really only needs to focus on the sales comparison approach. Later on, there's elements of the income approach, but no cost approach like we talked about before and a heavy weighted sales comparison approach. Very simply, we want to find similar single-family home sites that are like-kind as best we can, you know, comparable landsites for luxury homes.

Q Did Eric Trump provide you with any proposed comparables?

He did. He did. You know, the early phone calls with Eric Trump were with him explaining the site as I mentioned in grate detail which I expected him to do and which was very helpful because as we said before, typically the property owners know their properties better than the appraisers at the onset.

So I welcomed his input, did a great job of explaining, you know, some of the physical characteristics, neighboring

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properties, lake next door, couple of mansions on the property.

nd then he recognizing we needed to support, the values with comparables, he was willing to supply me with what he thought were good comparable sales and I had absolutely no problem receiving that type of data from him. Ultimately, I'm going to do a lot of research on my own, but there was absolutely no problem, you know, accepting what he was suggesting were good comps.

Q Did you find him to be knowledgeable, kind of in the realm of valuing these comparables?

Did I find Eric knowledgeable? Yeah, I think he understood his property. He had a very high opinion of the property which didn't surprise me. You know, we deal with a lot of trophy asset property owners and they love their properties and typically know a lot about them as I said. nd in some cases, they're entitled to their opinion of what they're worth.

nd he was of the mindset that there were only a few comps out there and he pointed me towards some subdivisions in Greenwich, most notably Conyers Farms. Sent me some other information on different home sites, but he believed Conyers Farms in Greenwich was a fabulous comp, you know. Of course, that's across the state lines and, you know, had to quickly do my homework on that subdivision. I was familiar with it, but I really wanted to get extra familiar to make sure it was truly a like-kind property to Seven Springs. Would you like me to

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expand on this topic?

Q I was going to ask you. Yes, could you explain the homework that you did?

Yeah. Sure. lthough, I feel like I have a very -- I'm very competent to appraise this type of property, I live on Long Island. I was -- I wasn't quite in my backyard, did as much homework as possible, but I thought it would be very appropriate to bring in a local expert.

Q Who was that expert?

The local expert was I selected was a gentleman named David Turner from a highly-regarded large residential brokerage firm in the Westchester area called Houlihan Lawrence. So David was one of the top producers in the luxury marketplace that would include home sales and land. I approached him and asked him if he would be interested in helping me with my understanding of land values in Bedford and he quickly agreed.

We scheduled an appointment to visit the site. We got permission to go back. I brought David to the property. He already had known about it, but we thought a detailed walk-through was appropriate. Spent quite a few hours at the property and he felt he now had a better understanding of the property and he could assist me with comparables, sets of comparables that he thought, you know, might be appropriate to consider.

I definitely talked to him about the potential of using

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Conyers Farms sales and he took the assignment very seriously. Took a while, but with some back-and-forth communication, he ultimately did reach some -- had some strong opinions on this site and where the range of value should fall.

Q Do you recall generally what those were?

Yeah. I mean, he came from a lot of different angles which I really appreciated. We were talking about value per site, you know, and the building sites did vary in size and I think some of the Conyers Farms comps may have suggested well over $3 million per parcel and he wasn't -- he really was not a believer in that, so he -- he didn't believe that was truly comparable for a lot of different reasons and then he provided me with a plethora of comps and justification for a value that would be well below $3 million per lot.

I had been doing my own homework. We have comparable services readily available as well, so by collaborating with David, doing my own work, I have family in residential that are very, very active as well, I came to the conclusion -- you know, to a range of value for this assignment.

Q So maybe at this point, we can get into some of the -- those ranges. I'm going to introduce Plaintiff's Exhibit 181 which is a spreadsheet provided to us natively. So it is just a cover sheet that I'm going to hand to you, but if we could look at the monitor here and let me know if you need anything blown up. But as a general matter, I'll just ask you

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if you recognize this spreadsheet.

I do recognize this spreadsheet.

MR. G BER: I just want to make sure that I move the prior Exhibit 131 into evidence.

MR. FIELDS: Objection; statute of limitations.

THE COURT: Overruled. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 131.)

Q I'm sorry, Mr. Mc rdle. I cut you off. Could you repeat --

I do recognize the spreadsheet.

Q What do you recognize the spreadsheet as?

Well, let me emphasize that this assignment, again, was a verbal assignment. The expectation was that we would get on call at the end of my findings and conclusions and just discuss it verbally, but as appraisers, we do have an obligation to build a work file and I certainly couldn't keep everything in my head. So this is my own internal work file, a rough idea on, you know, the configuration or the number of lots. We're dealing with three municipalities, so I tried to divide up the different sets of lots and then come to just a range of value for these properties based on what we were just talking about, my interaction with Eric Trump, David Turner, myself some of my family members that sell real estate. I started to get warmer and closer to where I thought the value was going to fall and

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this is -- these are my notes to myself.

Q Can you help summarize looking at the spreadsheet kind of where the -- what conclusions, if any, you derived from this exercise?

Sure. The top of the chart represents the Bedford lots. There were more lots in Bedford than the other municipalities, so at the time, we believed there were nine and then the second column is the acreage of each lot ranging from roughly five acres to eleven, so they did vary in size and then out to the right, I'm just penciling in like where that range might fall. That very first lot, B2, you know, we were thinking million-five to $2 million retail value of that lot.

(Continued on the next page.)

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nd you just continue to go further down the list into the two different other municipalities, New Castle and North Castle.

Q nd you do the same analysis for both of those?

Same analysis, a little more compressed.

Q So where -- what is your final sort of --

Excuse me?

Q Where do you end up at this top line number? Do you have any here?

I do have totals here. Column J represents the total of the low end of the range at 36 million. Column L is the high end of that range that I did that day on the spreadsheet and that would be 50 million.

Q Okay. So between 36 and 50 million was the range by this analysis?

There is few important points I want to make about this, though.

Q bsolutely.

This was a map in progress. It had not been fully approved and very important for us to -- the number of lots is a critical component of value here, especially if at the end of the day you're trying to develop an aggregate value before discounting it, at least get a general sense of what this thing might be worth once the sellout is complete, right, full sellout.

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You'll See in New Castle we were a little unsure of whether or not they would yield five lots or six lots.
Q I see that, yes.
Bedford we were pretty confident with nine based on the information we provided. nd North Castle, ten. So at that time we believed there were approximately 24 to 26 lots available. I -- multiple times. This was a very big concern of mine. I needed to totally understand the configuration and the number of lots as, again, that plays heavily into the final value.
Not only did I ask Sheri Dillon and Eric Trump about the lot yield, as we call it, I asked to speak to their engineer. So I always like to go to a third party who's been in the ground, measuring, calculating, deeply involved with zoning regulations and they quickly directed me to a company called Insight. nd I had at least one or two phone calls and my -- the objective of those phone calls was to get comfortable with the lot yield, the number of lots that would be yielded absent the two homes.
Q So this was a process of you attempting to gather information from the client about how to conduct -- the inputs that you needed to conduct analysis?
I needed a lot of input for this because this was not a final map, so it's always fluid and there are obstacles and I elected to, you know, I thought Insight was a great source and

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spoke to, of course, Sheri and Eric Trump and all parties kind of led me to the conclusion that we were dealing with, you know, there might be some movement, but it seemed like it was 24 to 26 lots.
Q Sorry. Just going kind of back. I appreciate the explanation. When you were discussing this range of values I think you said this is before discounting?
Yes.
Q Can you explain what that means?
Sure. Similar to the Briarcliff analysis we were talking about earlier it's basically the same sellout analysis except this is more simplistic. This just assumes the absorption or sales to individual lots to individual homebuilders or homeowners over the course of time. So it's merely, you know, you gather your number of lots, you have an estimated value per lot and you just chart them out over a time horizon in a DCF model.
Q So this hasn't been discounted?
This has not been discounted.
Q Can I now put up and show you PX 182? It's another spreadsheet. nd before we leave that one, I'd like to move to admit Plaintiff's 181 into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is

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received and marked Plaintiff's Exhibit Number 181 in evidence.)
Q Mr. Mc rdle, let me know whether you recognize this spreadsheet.
I do recognize the spreadsheet.
Q nd can you very briefly tell me what it is and then we can ask some questions about it.
Yes. This is the sellout analysis spreadsheet that I contained in my work file in preparation for a verbal delivery to the client. It's basically a compressed version of what we just looked at on the previous exhibit. Here, we're assuming eight lots in Bedford, six lots in New Castle and ten lots in North Castle.
We also decided based on market conditions that it would probably take six years to sell these lots. This type of analysis not only does it account for the sale of the lots, but looks like the other project we discussed it -- you are going to incur expenses as you go along and the rows in the bottom left of this exhibit are just that, you know, the expenses that we would normally deduct for this type of analysis would be, you know, your property taxes, any kind of dues related to the homeowner's association, if there is one. Certainly sales commissions and soft costs; legal, marketing, overhead, site costs. So they are all deducted from the gross retail proceeds which leaves you with a net cash flow each year and then from

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there we just discount back the -- those proceeds from each year and you can see after discounting the final value estimate was close to just under $30 million.
Q Thank you.
MR. G BER: I'd ask this be admitted into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 182 in evidence.)
Q So following these two analyses, the valuation you did and the subdivision analysis, were you prepared to present range of values to the client to complete the engagement as made out in the engagement letter?
Yes, I was. These sheets were developed for me internally, so I could have a fruitful, you know, verbal phone call with the client.
MR. G BER: So I'd like to now show the witness Plaintiff's Exhibit 3188.
Q Mr. Mc rdle, let me know if you recognize this document.
Yes, I recognize these documents as e-mails between myself, Eric Trump and Sheri Dillon trying to establish a good time to discuss my findings.
MR. G BER: I would ask this be admitted into

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evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3188 in evidence.)
Q Okay. So Mr. Mc rdle, the top e-mail here is from Eric Trump. It's to you and Sheri Dillon. Eric Trump says: "Sheri, by that point ideally, you will have seen the draft appraisal. ssuming we are all in the same ballpark after the call, we can finalize and hopefully put this to bed."
Can you understand -- can you tell me what you understood by Eric Trump's message here?
It's a little confusing. The final product under this engagement was merely a verbal phone call, me conveying our final value conclusions to the client. So finalizing and putting it to bed, that -- I think Eric's using some loose language there. I can't really -- I don't know what he was thinking, but in my mind we were -- this was the -- we were at the finish line.
Q So your understanding was you were setting up a call to convey the results of your --
bsolutely.
Q So I'd like to now show you -- this is Plaintiff's Exhibit 3206. Let me know if you recognize this.

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Looks like just another e-mail from Eric to me setting up the final call.
Q Okay.
MR. G BER: I would ask that this be moved into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: dmitted into evidence. Objection overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3206 in evidence.)
MR. G BER: I'm handing the witness Plaintiff's Exhibit 169 for identification.
Q Mr. Mc rdle, let me know if you recognize this.
This is an internal Cushman & Wakefield e-mail from myself to our top administrator in New York and my nephew who works with me just explaining that this consulting assignment has been completed, reminding her there is no report to -- written report to put in our files and the verbal consulting was completed.
Q What do you mean by "the verbal consulting was completed?"
I mean we would have had a call with Sheri and Eric regarding the final values.
Q nd you would have conveyed the value -- the 29 and a

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half million dollar value that you had in your spreadsheet to Eric Trump and Sheri Dillon on that call?
Most likely, yes.
Q When you say "most likely," can you elaborate on or be more specific?
Yes. The focus was more on the retail, what they could sell retail. So I know we talked about the ranges and I think ended up being around $2 million per lot.
The sellout analysis is a secondary concern to them, but it was -- I think they wanted to get comfortable with, you know, what each lot was worth. I mean, certainly throughout most of the assignment that's where their focus was.
Q nd the retail analysis is the first spreadsheet that we looked at, that's correct?
That's right.
Q So that range was 30 to $50 million?
That was 30 to 50. However, I did elect to lean towards the 50, which was in my mind very, very well supported based on all the research that we talked about.
Q s an undiscounted retail?
Undiscounted, correct.
Q Okay.
MR. G BER: I ask that Plaintiff's 169 be moved into evidence.
MR. FIELDS: Statute of limitations.

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THE COURT: Overruled.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 169 in evidence.)
Q So Mr. Mc rdle, I'm going to show you what we've marked as Plaintiff's Exhibit 911. Please read it and let me know if you recognize it.
Yes, I'm familiar with these e-mails between Eric Trump and myself and Sheri Dillon as well.
Q Okay.
MR. G BER: I'd ask this be moved into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 911 in evidence.)
Q So Mr. Mc rdle, just put this in front of you. Just to confirm, the second e-mail from you to Eric Trump asks for dial-in instructions for a 9:00 a.m. call on the 25th of ugust. The top e-mail says: "Thanks, David. Speak to you soon." It looks like it was at 8:30 a.m. Is this the -- would this be the date of the call that you had mentioned that you had with Sheri Dillon and Eric Trump where you communicated the range of values?
I honestly don't know if that was the date of the call.

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Q You don't know if it was -- does it seem likely that this could have been that call?
It could have been, but I don't have a hundred percent recall.
Q Okay. But when you wrote on the 8th of September that all verbal consulting had been completed and you just told me that you did have that call, you just not certain of the exact date of it, but you --
I definitely had that call.
Q Okay. dd this point I'd like to show you Plaintiff's Exhibit 133. Take a look at it, please, and let me know if you recognize it.
Yes, I am familiar with this. It's a letter of engagement again between myself and Cushman & Wakefield and Eric Trump of Seven Springs LLC.
MR. G BER: I'd ask this be moved into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 133 in evidence.)
Q nd Mr. Mc rdle, is the scope of work for this engagement, which is on Cushman & Wakefield letterhead this time and addressed to Eric Trump, as you said, is it the same or similar to the engagement where you were just discussing the

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consulting engagement?
This is an extension of the work that I started at the property. The scope is very different. s we know my involvement was very preliminary factfinding for the family and Sheri Dillon to make a business decision on going forward with the conservation easement.
This engagement I believe is intended to take it to the next step and start to -- and produce a written report with a more comprehensive report to get them closer to a potential conservation easement donation.
Q Do you know if this engagement was completed?
Yes, it was.
Q Maybe I can clear things up.
Mr. Mc rdle, I'd like to show you Plaintiff's Exhibit 185. Do you recognize this e-mail?
I may have been mistaken. There was a termination. I'm getting ahead of myself. They're so similar. I believe there was a termination of the idea of producing that written report.
Q Okay.
nd this appears to prove that.
Q I'm glad I can refresh your recollection.
Thank you.
MR. G BER: I'd ask that this document be moved into evidence.

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MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 185 in evidence.)
Q I'd like to hand you Plaintiff's Exhibit 104. Please take a look at it and let me know if you recognize that.
We caught up to yourself perhaps. Do you know what this document is?
This is again an engagement for Seven Springs between Cushman & Wakefield and Eric Trump. This is the document I thought I had in my hands a couple minutes ago. This is a request to go forward with a full comprehensive appraisal report for the subject property we've been discussing.
MR. G BER: I'd ask that this document be moved into evidence.
MR. FIELDS: Statute of limitations.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 104 in evidence.)
Q Could you look at page six, Mr. Mc rdle?
Okay.
Q So in addition to your signature on the Cushman & Wakefield, there is another signature here. Can you explain

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whose signature that is?
Sure. t this point it would've been logical for me to continue with this engagement but I had a tremendous workload at the time and elected to bow out of continuing my work on the Seven Springs property. I have a very capable, competent senior appraiser in my office that I asked to continue with this task, so I sort of served as a conduit here maintaining the relationship with Cushman & Wakefield, the Trump Organization, Sheri Dillon. So I assisted with this new engagement recognizing that Tim Barnes was going to take over and complete the assignment in its entirety and I would exit from the whole process. So we thought it was not appropriate to not only have me sign it but Tim as well since Tim would be signing the final document.
Q Is there anything else you remember about the transition of this engagement to yourself from Mr. Barnes?
Well, it's a unique assignment, a unique property, so we did have some discussions early on, kind of called it the hand off, handing off these one assignment from me to Tim.
I recall some brief conversations giving him a brief overview on the property itself and some of the work I had performed, which is logical. He's now got to step in and he's a very independent appraiser and I did not have a lot of interaction with him after that. He took hold of it wholeheartedly and performed the assignment.

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Q Okay. So Mr. Mc rdle, just about done, but -- so we talked about a number of engagements related to Seven Springs and Briarcliff that you undertook, you know, with Sheri Dillon and with Eric Trump and Trump Organization entities as your clients, yes?

Correct.

Q So I just wanted to show you a short clip from the deposition of Eric Trump and just ask you a question about it after it's played. This is starting from page 198, line ten of the deposition.

(Whereupon, there is a pause in the proceedings.)

Q Mr. Mc rdle, is this consistent with your recollection of Eric Trump's involvement in the engagements we've been discussing today?

MR. ROBERT: Objection.

THE COURT: I don't think that's a proper question. Is it consistent? I mean, you can ask something similar, but is it consistent, that's, I guess, for the trier of fact.

Q Was Mr. Eric Trump --

THE COURT: Wait.

MR. ROBERT: Furthermore, Your Honor, two things: One, is the government representing that the document Mr. Trump is looking at there is Plaintiff's Exhibit 104 that the witness has here? Because this is from 2015. The

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question appears to be 2014 that you asked on the video.

So is Mr. Trump looking what the witness has now?

THE COURT: Yes, I don't think that matters?

MR. MER: I don't think that matters.

MR. ROBERT: It does.

THE COURT: No, it doesn't. He's asking does he know who he is, did he work with him. It doesn't matter what year.

MR. ROBERT: But if you listen to the words Mr. Trump is saying, he's talking about Sheri Dillon's name and I don't see Sheri Dillon on this document. That's why I want to know if it's the same document or not.

MR. MER: gain, it doesn't matter, Your Honor. He was asked questions, he gave testimony. This is evidence. It's a party admission against interest. It's evidence, it comes in.

MR. ROBERT: Evidence of what?

MR. G BER: We can turn to the CPLR.

MR. ROBERT: Please.

MR. G BER: 3117 ( ) (2): "The deposition testimony of a party or of any person who was a party when the testimony was given or of any person who at the time the testimony was given was an officer, director, member, employee, a managing or authorized agent."

THE COURT: Wait.

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MR. ROBERT: That's --

MR. G BER: Mr. Robert, I'm happy to tell you -- if you let me finish.

THE COURT: One at a time, guys.

MR. ROBERT: I am not disputing the fact that you can use a party's deposition for a purpose you want. What I'm asking is for a point of clarification. Mr. Trump is combing through a document, that's what you've asked the witness about. I want to know if it's the same document the witness has in front of him, that's all. Just so that nothing is misleading. That's all my question is.

THE COURT: It doesn't matter, so objection overruled. If that's the objection --

MR. ROBERT: Thank you, Judge.

Q Now, do you recall that or do you believe that Eric Trump was not involved in appraisals that you worked on?

MR. KISE: Objection. He never said Mr. Trump. Never said he wasn't involved. He said he didn't remember, so he's assuming facts not in evidence.

Q "I really haven't been involved in the appraisal work on this property," 199:06, 199:07.

Does that conform to your recollection of events?

No.

MR. G BER: Thank you. No further questions.

THE COURT: Counselors, what next?

Page 2006

MR. FIELDS: Your Honor, it's 4:22. Would the Court's preference be to begin tomorrow morning?

THE COURT: I couldn't tell who said that.

MR. FIELDS: That's okay. I'm used to people not remembering my voice, which is generally a good thing.

THE COURT: You are being blocked also by the screen. We're not going to be done, but we can use the eight minutes. Let's use it. We only have another two and a half months.

Okay, let's proceed with the cross examination of this witness by Mr. Field -- it's Fields; right?

MR. FIELDS: Yes, Your Honor.

THE COURT: I'm sorry. I said Field. It's Fields.

Transcript continues on the following page....

D. MC RDLE - CROSS(MR. FIELDS) Page 2007

THE COURT: Let's go to 4:40 today considering everything including breaking early tomorrow. So you have 15 minutes.

MR. FIELDS: Thank you, your Honor.

Q Good afternoon, Mr. Mc rdle. My name is Lazaro Fields. I represent some of the defendants in this action. I am going to ask you a few questions. Is that okay?

Yes.

Q I just want to be clear that you recall being shown several appraisals and draft appraisals by the government in your examination?

Correct.

Q nd are all of the appraisals that the government showed you related to conservation easements?

Yes, they were.

Q So the testimony that you gave on direct examination was just limited to conservation easements, correct?

The appraisal data we went over today was related to conservation easements.

Q Is that an area that you focus in, that you specialize in?

Yes, I have.

Q nd are those conservation easements different than standard market value appraisals that other Cushman & Wakefield professionals may perform?

D. MC RDLE - CROSS(MR. FIELDS) Page 2008

Yes, there's a nuance to them.

Q Could you just briefly describe what the differences are between the two?

Well, we talked about it today a little bit. Large majority of the appraisal for conservation easement is fundamental real estate valuation. Talked about valuation of general valuation of land, valuation of potential build-out of a townhouse project, talked about single-family home valuation. We talked about the golf and country club valuation, the differences in some of the adjustments that have to take place after those values are established in some determinations or estimates on how one value might impact the other.

Q What are some of the differences among the adjustments that have to be made?

Well, in looking at the Briarcliff, for example, we had to weigh whether or not the potential condominium project or townhouse project would benefit the golf club or detract from it. nd in that report, there's great detail given to and thought given to some of the positive attributes and some of the negatives.

Q nd is there a recordkeeping practice among appraisers in terms of maintaining records that you use to conduct an appraisal?

Very much so. We're obligated to maintain files.

Q nd is that under the USP P guidelines?

D. MC RDLE - CROSS(MR. FIELDS) Page 2009

It is.

Q nd just generally, what is that requirement under USP P?

Seven years.

Q But what does the guideline provide? What does it suggest to you that you need to keep or maintain?

Oh -- well, whatever we feel is relevant and pertinent to the assignment at hand. It is mostly electronic nowadays. ny kind of research or pertinent information, surveys, photos, some -- any kind of notes that we take, we try to, you know, deposit them in the folder at the end of the assignment.

Q So then would it be fair to say that anything that you relied on in an appraisal would be contained within that file or would there be things not contained within the file that you may have relied on in an appraisal?

There might be things that don't quite make it in there in this day and age. You know, reading it through that articles. Electronic articles don't always make it in there but, you know, you're building a file mentally and also you have an obligation to, you know -- anything physical to, you know -- you might put in there.

Q In terms of Cushman & Wakefield's recordkeeping practice, is there an electronic database that you use to maintain your files?

Yes, there certainly is. We have a network drive.

D. MC RDLE - CROSS(MR. FIELDS) Page 2010

Q Is that network drive assessable -- withdrawn. Can you as a Cushman & Wakefield employee access the files of another appraiser at Cushman & Wakefield?

Yes, if it is within the same office. In other words, New York colleagues can access other New York colleagues' work.

Q nd are there instances in which an appraiser is walled off from obtaining the file of another appraiser?

No. I mean, some people have subfolders. There are basically two depositories, so, you know, it may be in one of two areas for the most part, but they're not very difficult to obtain.

Q nd would you agree with me that in conducting appraisals, that you rely on engineers and architects, among others, to inform you as to material issues within an appraisal?

Depending on the complexity of the asset, we often -- you know, in addition to the client, we're often directed to a professional such as an engineer, surveyor or construction manager. However, it relates to the project at hand. So yes, third parties are critical sources for us.

Q nd when conducting a conservation easement appraisal, are you permitted to assume hypothetical conditions?

I think you'd have to be a little more specific on that.

Q Sure. So, for instance, with zoning, if you're conducting a conservation easement appraisal and there's a

D. MC RDLE - CROSS(MR. FIELDS) Page 2011

zoning issue on day one, does that necessarily mean that on day two, that zoning issue would sill persist and how does that factor into your approach?

Let me say every assignment is different and we treat them on a case by case basis. Sometimes there is a need for a hypothetical condition or extraordinary assumption especially when things are not black and white and may be in transition.

Q You said hypothetical condition and/or extraordinary assumption. re they the same or are they different terms?

They are slightly different.

Q What are the differences?

Hypothetical would be the condition absolutely does not exist and we're going to bypass it and make an exception or make an assumption. n extraordinary assumption is softer, something that, you know, it is a fair judgment to make to move the appraisal to the finish line and it's sort of a flag that we raise to the client that, you know, we -- we had to assume this. There might have been a bit of information that was lacking and in order to complete the appraisal, we feel like it's appropriate to use this assumption. nd by the way, you know, it's bolded in many, many places in the report.

Q Did you employ any extraordinary assumptions in the appraisals or draft appraisals that you discussed with government counsel on direct examination?

I'm not sure I understand the question.

D. MC RDLE - CROSS(MR. FIELDS) Page 2012

Q Well, were there any extraordinary assumptions -- was the term "extraordinary assumptions"?

Yes.

Q Did you assume any extraordinary assumptions in the appraisals that you discussed with government counsel on direct examination?

I think we may have made some assumptions on Seven Springs because that property was in transition at the time.

MR. KISE: One quick housekeeping point that we just missed. So the video clip that they played of Eric Trump, the record has it starting at page 198, line ten in the deposition, but it doesn't say when it ended. Do we know what the last -- where it went through just so we have it because it is not in the record and they, of course, didn't type out --

MR. G BER: It was at the bottom of the video, but --

MR. G BER: Page 199, line 20.

THE COURT: Please continue.

Q Mr. Mc rdle, at the beginning of your examination with Mr. Gaber, you discussed the Briarcliff appraisal. Do you recall that generally?

Certainly.

Q nd you had a discussion with Mr. Gaber about how important it was to know your client. Do you remember that?

D. MC RDLE - CROSS(MR. FIELDS) Page 2013

I do.

Q nd you also testified, I believe, that a property owner knows the property just about better than anybody else; is that accurate?

Oftentimes, that is the case.

Q nd that's why a property owners for you are crucial to communicating with to understand the property better, right?

They are a big part of our, you know, exploratory work.

THE COURT: Five-minute warning.

Q nd would you agree that the client has input in the value that you ultimately arrive at?

No, I would not agree with that.

Q The client has no input?

He has input in the physical description of the property, but ultimately, it's our conclusion based on a number of facts that we discovered and got comfortable with over the process of writing the appraisal, so...

Q Fair. nd I'm not trying to suggest that the client's value has to be your value. My question is more is it standard practice for a client to advocate for their property to their appraiser.

I would not call it standard practice, but, you know, I've seen it before over my long career and, you know, it was -- you know, it happens. It happens as a course of doing business.

D. MC RDLE - CROSS(MR. FIELDS) Page 2014

Q nd it is not unusual for that to happen?

It's not unusual.

Q nd, of course, a client can have their own opinion of value that may differ from your opinion of value, correct?

Well, absolutely.

Q nd that is, I'm sure, common practice in your experience as well?

It's common practice, but ultimately, we're the ones calling the value.

Q You also discussed with Mr. Gaber the highest and best use analysis. Do you recall that?

Sure.

Q nd I think you said there are four steps perhaps. The first was legally permissible; the second, physically possible; and the third, feasible; finally, the fourth most profitable?

That's correct.

Q Is that a standard set of steps that you undertake into valuing a conservation easement?

Yes, because, you know, ultimately, it was the valuation of the land. Whether it was for conservation or not, that test was still very relevant in the process.

Q nd would you agree with me that different appraisers could look at these factors differently?

In some cases, but I think on a lot of properties, the appraisers often default to a very similar highest and best use.

Q nd in terms of specifically conservation easement appraisals, would you agree with me that there are subjectivities that appraisers have to comb through, authorized to come to a conclusion on value?

There is some subjectivity. There is some objectivity in the beginning and then there is some subjectivity more towards the end with the final value conclusion.

Q nd again, reasonable appraisers exercising their judgment could differ as to some of the subjectivities in valuating a property?

More times than not, we gravitate towards each other if we are given the same set of circumstances or property. The variances are really -- normally not too wide.

Q But it is possible?

It is possible.

Q You discussed with Mr. Gaber briefly the subdivision sell-out analysis. Do you recall that?

I do.

Q When you are conducting a subdivision sell-out analysis, are you assuming -- you are assuming a set of facts as to how many homes could be built, right? Is that fair?

Yeah, that's one component of it. Certainly, we want to put our arms around how many units are in play for sure.

Q nd where does that information come from generally?

That information -- my first source would be the owner

and again, they typically own their property, know their property better than anybody, and if it is a complex property, the -- they often direct us to their third-party surveyors, engineers, contractors and we always like to get verification. Rarely will we just take an owner's word for it. We also go to step two to, you know, assure ourselves that the information is well supported from a third party.

THE COURT: One-minute warning.

Q Mr. Mc rdle, Mr. Gaber showed you an e-mail at the beginning of his examination where you wrote to Eric Trump, "Thank you for the opportunity." Do you generally recall that e-mail?

Yes, I do.

Q Were you excited about the opportunity to work on some of these Trump properties?

Yeah. We're a large firm and we were proud to be working with the Trump Organization.

Q You hadn't done work with them before? This was a new client for you?

I had done work with them before. The company had been working with them and we were delighted to join up again on a new assignment.

MR. FIELDS: Your Honor.

THE COURT: Okay. I'll direct the witness not to discuss this case or your testimony because you'll be

continuing tomorrow.

Just one quick observation. Common sense tells me that different appraisers could appraise a different property different. How differently, that's another question. To ask every witness over and over again could different appraisers appraise a given property differently seems to me to just be wasting time.

MR. KISE: The only point I'll make on that is we've listened to what I would say in the last two days excruciating questions from the government asking about who's on the "re" line and who's on the "bcc" line.

I don't recall you respectfully hurrying them, so we are trying to move through our examination efficiently, but there are points we believe we need to make. We will take your advice as we always do, but it always seems like when there's a hurry up on the clock, it's our side that's being hurried up and not theirs.

THE COURT: Well, I'm sorry you feel that way. I want everybody to be efficient and I just want to make clear what I said initially here. I'm not stopping you from doing it.

MR. KISE: I know.

THE COURT: You know me well enough.

MR. KISE: I do. Thank you.

THE COURT: ll right. Tomorrow at ten o'clock.

See you all then.

(Witness exits the stand.)

(Whereupon, the trial was adjourned to October 20, 2023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al

D VID MC RDLE, R Y FLORES
October 20, 2023

NICOLE C. ROBINSON

Original File 102023TRUMP.txt
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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
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PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

Supreme Courthouse
60 Centre Street
New York, New York
October 20, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

Page 2020

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THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.

THE COURT: On October 3rd, during a break in this trial, defendant Donald Trump posted to his social media account an untrue, disparaging, and personally identifying post about my principal law clerk. I spoke to defendants, both on and off the record.

Off the record, I ordered Donald Trump to remove the post immediately. pproximately ten minutes later, Donald Trump represented to me that he had taken down the offending post and that he would not engage in similar behavior going forward. I then, on the record, imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, e-mailing or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances."

I further made clear that "failure to abide by this directive will result in serious sanctions." Despite this

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clear order, last night I learned that the subject offending post was never removed from the website "DonaldJTrump.com," and, in fact, had been on that website for the past 17 days. I understand that it was removed late last night, but only in response to an e-mail from this Court.

In the current overheated climate, incendiary untruths can, and in some cases already has, led to serious physical harm and worse.

I will now allow defendants an opportunity to explain why this blatant violation of a gag order should not result in serious sanctions including financial penalties holding Donald Trump in contempt and/or possibly imprisoning him.

Defendants.

MR. KISE: Good morning, Your Honor.

THE COURT: Good morning.

MR. KISE: Let me begin by saying what I am going to tell you is based on my understanding.

THE COURT: Sure.

MR. KISE: Because as my staff will clearly affirm, I am the least technological person. I don't even have my corporate e-mail on my phone. So based on my understanding, what has happened here is truly inappropriate. So there were no new postings of any kind after October 3rd. The Truth Social post was taken down as of when President Trump

represented in court, absolutely.

My understanding of what happens, though, with the campaign machinery is as follows. So the Truth Social post, and I believe this happens with all social posts, they are captured and published on the website as what's called an ICYMI e-mail, which is an "In Case You Missed It" e-mail, which is what the link was that you sent last night.

The campaign communication team sends out press releases as a matter of course as I understand. They are just packaged all and I think -- I will get to that in a minute. The press releases take the "truths" and they're marked [sic] up in Nucleus, that's the web provider Nucleus, and then they're teed up as an FYI e-mail that is sent in e-mail via Nucleus to the e-mail, the campaign e-mail list.

THE COURT: Just let me interrupt one second. Do we know how many people are on the campaign e-mails?

MR. KISE: I do not at this moment, but I can find that out for the Court. That's a fair question and the Court -- I think you noted this at the hearing because you stated, and this was based on our conversations I think off record, that I have since ordered the post deleted.

pparently, it was, but it was also e-mailed out to millions of other recipients. I think that's right. I could get you the precise number, but as you observed that day, that apparently is what happens, is that Truth and then

it is packaged up by Nucleus and it is just sent out as an e-mail. Those e-mails cannot be recalled. The Truth post was taken down. Nothing further has been posted on Truth. President Trump has not made any statements of any kind about court staff, has abided by the order completely; but it appears no one also took down the ICYMI, In Case You Missed It, link that's in the campaign website in the back pages.

So, again, this is my understanding, so bear with me, if you go to the website, there's a link for news and then you go to the link for news, that brings up other things and then part of that is a whole bunch of these ICYMI, In Case You Missed It links. So that link was not -- it appears was not taken down from the campaign website. The link has now been taken down as you observed and there is nothing else out there and I will get further confirmation of this, but I had confirmation last night and again this morning that we have no control over what is being published.

So truly, this appears to be inadvertent between the campaign Nucleus and it is a very large operation. I'm not offering that by way of excuse. I'm just explaining the circumstances. It is clear that President Trump directed that this be done. I mean, he did it in my presence. He did it in your presence. He affirmed that he was taking the

post down and it would be removed.

So this is just part of the, for lack of a better word, unfortunate part of the process that is built into the campaign structure as I understand it, that all of his Truth posts are wrapped up and sent out by Nucleus and then sent out in these "In Case You Missed It" e-mails.

So it is unfortunate. I certainly apologize on behalf of my clients and I can get further assurance from the tech people as to the number the e-mail went out to and re-confirmation that anything we have control over has been completely removed and deleted.

THE COURT: I take issue with one thing you said, which I don't know, but when you said that he -- that Donald Trump ordered the post removed in my presence, no, he didn't. He went outside --

MR. KISE: Okay. Okay. That's fair. He may not have. I don't remember the chain of events. I know that he did. I can assure you that he did and his communications, I believe, so there was no intention to evade or circumvent or ignore the order. I can assure you that. I just know that this is a very large machine and this is how it is. One of the reasons, frankly, I don't have social media because these things get away from you very, very rapidly, quite honestly, but that's it. It has been taken down and we don't have any other -- there were no subsequent postings,

meaning that since the order was entered, my understanding is that there was nothing -- no further comment, no further -- it was all part of this process that sent it out and left it on the website in the back pages.

THE COURT: Thank you.

Mr. Robert, anything to add?

MR. ROBERT: On behalf of my clients, I join in what Mr. Kise said. Thank you, your Honor.

THE COURT: Plaintiff, anything to -- any comments?

MR. W LL CE: Nothing from the ttorney General, Your Honor.

THE COURT: I'll take this under advisement, but I want to make clear that Donald Trump is still responsible for the large machine even if it is a large machine.

ll right. We have some scheduling issues. I'm turning the microphone over to my principal law clerk.

MS. GREENFIELD: We received, I know the parties are aware, we received a motion that was submitted last night by counsel for Ivanka Trump and I wanted to talk briefly to the parties about a briefing schedule for that. We'd like to obviously escalate that as quickly as possible and our intent as for right now is to try to schedule oral argument on that on a trial day, but to begin at 9:30 so as to not waste witness testimony.

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O G and defendants, to the extent that you want to brief on this issue, if you could let us know how soon you can get that done. We'd like to get this oral argument on the motion scheduled for next week, if possible.

MR. W LL CE: Would you like us to huddle first? We will do so during the break.

MS. GREENFIELD: Thank you.

MR. KISE: One more minor scheduling. I mean, as long as we are on scheduling. Judge Cannon in the case in south Florida has ordered a hearing on November 1st. There's going to be some dialog. I understand that they are in court today on another issue unrelated to my client, but I'm trying to find out if Judge Cannon will allow me to appear on a Monday or Friday or perhaps by video on Wednesday. I just want to alert the Court that I'm -- I may ask you to be excused from trial for one of those days, whatever day the hearing is.

THE COURT: ll right. Thanks for the notice. We will deal with it if and when it comes out.

MR. ROBERT: One other mechanical thing, Your Honor, if I may. We are going to be submitting to you the pro hac application of Ivan Feris and Jennifer Hernandez to help with the depositions next week since we are doing deps and trial. The ttorney General has no opposition and since one of the depositions is Monday, we would just ask that the

R FLORES - DIRECT(MR. MER) Page 2028

Court sign the order as soon as possible. We will be UCF-g it this morning. Thank you.

THE COURT: Granted.

MR. ROBERT: Thank you.

THE COURT: Let's get the witness.

MR. FIELDS: We took Your Honor's direction to heart last night. This cross-examination will be exceedingly brief and we will get Mr. Mc rdle out for an early weekend and we can move forward.

THE COURT: Okay.

THE OFFICER: Witness entering.

THE COURT: I will advise the witness, as I always do, that he is still under oath. Let's continue the examination by Mr. Fields.

MR. FIELDS: Thank you, Your Honor.

CROSS-EX MIN TION

BY MR. FIELDS: (CONT'D)

Q I have a series of short questions for you and we will have you on your way for the weekend.

Thank you.

Q You testified yesterday, I believe it was, relating to Seven Springs, that you reached out to a real estate broker in the Connecticut area; is that correct?

He was based in Westchester County.

Q nd he had -- did he have knowledge of the Conyers

D. MC RDLE - CROSS(MR. FIELDS) Page 2029

Farm subdivision; is that accurate?

He did.

Q nd this was, again, related to Seven Springs, right?

Related to Seven Springs, correct.

Q This was Mr. David Turner?

Yes, it was.

Q Would you agree that it is common in your industry to rely on real estate brokers for comparables?

It all depends on the assignment at hand. This assignment was unique. I wanted to make sure that I did the correct level of due diligence and I felt it was appropriate to bring in someone very local who had an understanding of the immediate land values in Bedford, New Castle, North Castle as an assist for the process. So in this case, it was appropriate to lean on a real estate broker.

Q In large part, it was appropriate and it was in this case because the real estate broker has an appreciation for the local values of the land; is that fair?

It is fair.

Q If I could, Mr. Mc rdle, if we could put up Plaintiff's 132 that was admitted yesterday. I certainly don't intend this to be a Perry Mason moment, but I want to ask a clarifying question. If you recall there was some questioning with Mr. Gaber regarding the engagement and who the client was on the engagement. Do you generally recall that line of questioning?

D. MC RDLE - CROSS(MR. FIELDS) Page 2030

Yes.

Q Okay. Just for the record, where it says, "the parties to this agreement," in the middle of the page, would you agree with me that the two parties listed there are Cushman & Wakefield ffiliated Company and Trump Briarcliff Manor Development, LLC?

Yes those are the parties to the agreement.

Q If you would flip to the sixth page of the engagement letter.

Okay.

Q gain, in the middle where it says, "agreed," it lists the client as Trump Briarcliff Manor Development, LLC, it has Mr. Eric Trump's signature and then underneath that, it says, "title EVP."

Did you understand that to mean that he was signing as executive vice-president of that particular LLC?

Yes, that was my understanding.

Q Thank you.

MR. FIELDS: I apologize.

THE COURT: "Thank you" isn't so bad. It is the "great" that I objected to.

Q gain, also, Mr. Mc rdle, you worked with Sherri Dillon who was an attorney on behalf of some of the Trump related entities; is that fair?

That's correct.

D. MC RDLE - CROSS(MR. FIELDS) Page 2031

Q Would you agree with me that Ms. Dillon is meticulous?
I would agree with that.
Q Would you agree with me that Ms. Dillon is a good, diligent attorney?
Based on my experience with her, she appeared to be.
MR. FIELDS: If I may, I'm going to hand up to the witness what's been marked for identification as Plaintiff's 175.
Q Take a look at this and let me know if you recognize it.
I do recognize this e-mail.
Q nd is this an e-mail between you and Mr. Timothy Barnes?
This is an e-mail from myself to a colleague at Cushman & Wakefield, Timothy Barnes.
MR. FIELDS: Your Honor, I move to admit Plaintiff's 175.
MR. ROBERT: gain, this is one of the times when introducing an exhibit subject to our statute of limitations because questions were brought out on direct. Same as we've done in the past.
THE COURT: I understand. The objection is noted. Overruled.
MR. G BER: I want to note that there is a -- it is unclear whether or not this was a draft or whether it was

D. MC RDLE - CROSS(MR. FIELDS) Page 2032

sent.
THE COURT: You may ask the witness.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 175.)
Q Would you note, Mr. Mc rdle -- I will represent to you this was produced to us as you can see on the bottom -- scroll to the bottom.
There is a Cushman & Wakefield Bates number on the bottom, C&W, do you see that?
Yes.
Q I'll represent to you that this was produced as part of this litigation from Cushman & Wakefield, but do you see at the top that there's a blank space next to the from? Do you have any idea why that would be blank?
No. I've seen this before and I don't understand the reason for it.
Q Fair enough. Neither do I, but, nevertheless, you sent this e-mail to Mr. Barnes; is that fair?
That is fair.
Q This was in May of 2015. Would it be fair to say that you were reaching out to Mr. Barnes to inquire whether he was interested on working on the Seven Springs conservation easement appraisal?
That is correct.
Q You noted that you had been working with this outside

D. MC RDLE - CROSS(MR. FIELDS) Page 2033

legal staff for several years. Would that be Ms. Sherri Dillon?
That's correct.
Q You noted that the assignment was not a great fit for you for several reasons. Was one of those reasons that you were extremely busy around this time?
That's correct. I had a very heavy workload and it really was not a good fit. I was hoping to serve some other clients, you know, do the right thing for them as well.
Q nd would it also be fair to say that Mr. Barnes had a little bit more subject matter expertise regarding this easement appraisal?
I wouldn't necessarily say he had more experience, but he was clearly competent and I believed that he could get the job done.
Q nd then the second to last line, Mr. Mc rdle, you note that the attorney is excellent. Who are you referring to when you refer to the attorney?
Sherri Dillon.
Q nd regarding Seven Springs, would you agree with me that Mr. Eric Trump had a view that when Seven Springs was developed, it would be equally comparable to Conyers Farms?
That was his view.
Q nd that's Mr. Trump felt that was one of the best comps to compare Seven Springs to; is that fair?
It was one of his favorite comps to promote.

D. MC RDLE - CROSS(MR. FIELDS) Page 2034

THE COURT: Remember, try to use first names because Mr. Trump could refer to several people.
MR. FIELDS: Yes, sir.
Q I'm referring to Mr. Eric Trump.
MR. FIELDS: Thank you, Your Honor. I apologize.
Q Would you agree that as an owner of the property, Mr. Trump, Eric Trump is entitled to have his view?
Yes. We always seek out an opinion. It's fair to obtain their input.
Q There was also an issue regarding litigation in Seven Springs, an access road? Do you generally recall that there was some litigation involving an access road in Seven Springs?
I do.
Q nd would you agree with me that that litigation was just a piece of information that went into your overall analysis for these --
MR. G BER: This is going beyond the scope of the direct at this point and so I'm just wondering if they're taking Mr. Mc rdle for their case at this point out of turn or what's going on.
MR. FIELDS: We can. I was just going to ask him about the Seven Springs conservation easement appraisal.
THE COURT: Is it outside the scope of direct and if so, are you addressing him as your witness?
MR. FIELDS: Well --

D. MC RDLE - CROSS(MR. FIELDS) Page 2035

MR. KISE: I don't think it is outside the scope of direct at all. I mean, I certainly don't, but to the extent that that makes everyone happier, then we can say fine. We certainly don't want to trouble this witness with bringing him back, but I don't see that it's at all outside the scope of direct. It relates to Seven Springs and the appraisals and the conservation easement. It is all the same subject matter.

MR. G BER: If that's the case and the representation, that's fine by us.

MR. KISE: Yes.

THE COURT: Okay. So we will just continue with the vague sense of yeah, just go ahead and do it.

Q So let me restate the question, if I could, Mr. Mc rdle. Would you agree with me that the litigation involving the access road was just a piece of information that went into your overall analysis for the property?

Yes, it was. I was gathering a lot of facts and this was -- this was -- I was aware of that at the time.

Q But the litigation involving the access road was not a dispositive issue in your analysis because there were alternatives that were suitable and reasonable; is that right?

Could you repeat that?

Q Sure. The litigation involving the access road was not a dispositive issue for you because there were alternatives that

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were suitable and reasonable; is that right?

That's correct.

MR. FIELDS: Thank you very much. Have a wonderful weekend.

THE COURT: Is that it for defense? ny re-direct?

MR. G BER: No, Judge.

THE COURT: I may have one question. Hold on.

Mr. Mc rdle, my one question and you've probably been asked this before, are you related to ndrea Mc rdle, Broadway's first nnie?

THE WITNESS: No. It has been asked many times, but I'm not.

THE COURT: Oh, shucks.

THE WITNESS: I do have some redheads in the family.

THE COURT: Thank you. You're excused.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: I think he is on his way here, but plaintiff, would you like to call your next witness.

MR. MER: We would, Your Honor. The people call Raymond Flores.

(Continued on the next page.)

R. Flores - Plaintiff - direct (mer) Page 2037

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm any testimony you give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE COURT OFFICER: Please have a seat. Please state your full name and either home or business address on the record.

THE WITNESS: Raymond Flores. Home address is 525 West 52nd Street, partment 14D, New York, New York 10019.

THE COURT: nd I'll direct the witness you need to speak right into the mic, like, this loudly, clearly, slowly.

nd let's start with the questions.

MR. MER: Thank you.

DIRECT EX MIN TION

BY MR. MER:

Q Good morning, Mr. Flores. My name is ndrew mer. I'm with the ttorney General's Office.

Can we start with just having you summarize for the Court your educational background after high school?

I graduated from the University of Pennsylvania in

R. Flores - Plaintiff - direct (mer) Page 2038

2010.

Q nd what was your degree in?

Bachelor's of science and economics.

Q nd subsequent to graduating have you received any professional certifications or licenses?

No.

Q nd can you take us through your employment history following your graduation from Wharton?

I worked with Moody's Investors Service from November of 2010 through June of 2012. Subsequently, I joined the Trump Organization from June of 2012 through March of 2022, and I'm currently employed by Brev Management as of March of 2022 to today.

Q Let me just go back and fill in some details.

For the year and a half that you were at Moody's what was your title?

I believe I was an associate analyst.

Q nd what area were you an analyst in?

The commercial real estate finance team.

Q nd when you joined the Trump Organization in June of 2012, what was your title that you started at?

I was an analyst.

Q nd were you an analyst within any particular team?

I believe it was the acquisitions and development team.

Q nd can you just tell us very generally what your role

R. Flores - Plaintiff - direct (mer) Page 2039

was as an analyst with the acquisitions and development team?
t that point in time it was -- I was responsible for primarily financial analysis for the real estate investments of the company.
Q Did it include analysis for underwriting new acquisitions?
It did.
Q Did it include analysis for development opportunities?
It did.
Q Did your title change over the course of your employment at the Trump Organization?
Yes.
Q nd can you just walk us through the various title changes you had and approximately when those titles changed?
I believe my title changed in 2014 to associate and in 2016 to vice president.
Q nd with all those title changes did you remain within the acquisitions and development team?
I did.
Q nd was there any change in responsibilities with each of those promotions?
Overall the job remained supporting acquisitions and development, but the scope went beyond financial analysis to negotiating agreements related to financings and the asset management of the properties.

R. Flores - Plaintiff - direct (mer) Page 2040

Q nd between June of 2012 when you joined the Trump Organization and March of 2022 when you left, can you tell us who you reported to and if it changed over time when?
From June of 2012 to sometime in 2016, I forget the approximate date, I reported to David Orowitz. Following Mr. Orowitz's departure I reported to Don, Jr. and Eric Trump.
Q t any point in time did you report to Ivanka Trump?
I believe directly from the point of David Orowitz's departure in 2016 to Mrs. Trump's departure from the company in 2016.
Q nd when did Mr. Orowitz leave?
Sometime fall of 2016, I believe.
Q Did you have any dotted-line reporting responsibilities to Eric Trump during the period of time that you were at the Trump Organization?
Can you define "dotted line?"
Q Well, not a direct reporting relationship, but a reporting relationships nonetheless?
nd can you repeat the first part of that question?
Q Sure. Did you have any dotted-line reporting relationship with Eric Trump during any period of time that you were at the Trump Organization?
Well, I reported directly to Eric Trump from -- I guess -- from the fall of 2016 to my departure I did report directly to Eric Trump.

R. Flores - Plaintiff - direct (mer) Page 2041

Q So from 2016 to your departure you reported directly to Eric Trump, yes?
Correct.
Q nd Donald Trump, Jr. did you report to him directly during that period as well?
Correct.
Q Did you ever report to llen Weisselberg?
I did not.
Q Okay. Did you ever report directly to Jeff McConney?
I did not.
Q nd prior to 2016 when you said that you had a direct reporting relationship with Eric Trump and Donald Trump, Jr., did you ever have a dotted line reporting relationship to either of them?
So I did not have a direct reporting relationship to Eric -- I think your question was before 2016.
Q Yes, but my question was a dotted line reporting relationship.
I believe they were indirect, yes.
Q So just to circle back to make sure the record is clear, prior to 2016 when you began directly reporting to Eric Trump and Donald Trump, Jr. you had a dotted line reporting relationship to both of them. Is that fair?
Yes.
Q nd focusing on the period of time when you were vice

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president, did you interact with Mr. Weisselberg at all?
I did.
Q nd how often?
I believe once a week.
Q nd can you describe generally the nature of your interactions with Mr. Weisselberg during that period of time?
I believe it was relating to existing assets within the portfolio.
Q Can you just tell us, though, what the nature of the interaction was with Mr. Weisselberg?
I can -- can you provide more context to that question?
Q Sure. What was the business purpose for you to be interacting with him?
I think llen at points in time would reach out for information regarding certain properties that I had a role in managing and overseeing.
Q Generally speaking what were the properties that you had a role in managing or overseeing?
It was the Old Post Office redevelopment in Washington, D.C.; there was a golf resource in Doral, Florida; hotel in Chicago or the primary properties that I helped manage.
Q nd during the period of time that you were vice president did you have any interactions with Mr. McConney?
I did.
Q nd how often would you interact with Mr. McConney?

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Probably a handful of times in a given month.
Q nd can you generally describe the nature of your interactions with Mr. McConney?
Similar to the types of interactions with Mr. Weisselberg, Mr. McConney would reach out for information regarding the properties that I was responsible for managing and I was primarily the outreach.
Q So prior to leaving the Trump Organization in March of 2022, were you ever involved in the preparation of Donald J. Trump's Statements of Financial Condition?
I was. I believe I was involved beginning in -- towards the end of 2020 in the preparation of the Statement of Financial Condition presented to outside parties in 2021, but prior to that I was not involved with the preparation of that statement.
Q Just so we're clear, because you said presented in 2021, but if -- the statement you began working on in late 2020 was that the statement that was as of June 2020?
I don't recall. I believe it was, but I don't recall.
Q nd was there a second statement that you were involved in that would have been as of June 30, 2021 that you participated in working on before you left in March of '22?
I don't recall.
Q You do recall, though, beginning work on the Statement of Financial Condition as early as late 2020; is that right?

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That's correct.
Q Prior to your involvement in the preparation of the June 30, 2020 Statement of Financial Condition were you aware that such a document existed within the company?
I was not aware that that document existed.
Q nd can you describe for us what the nature of your involvement was in the preparation of that initial statement that you were involved in, the one that was in late 2020?
I believe lan Garten, chief legal officer of the company reached out to ask for me to review the statement -- the preparation of the Statement of Financial Condition.
Q So my question's a little different. It wasn't about how you first got involved. It was just to describe for me the nature of what you did in connection with your role in the preparation of the statement.
I reviewed the statement and the underlying assumptions that went in the valuations.
Q Let me pause on the first half of your answer.
You said you reviewed the statement. Did you review the -- we've seen two documents, one called the Jeff Supporting Data spreadsheet and then the actual spreadsheet itself. So when you said you reviewed the statement, what were you referring to?
I believe I reviewed -- I believe I reviewed descriptions of the property valuations that went into the

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statement. I don't actually recall reviewing the final statement.
Q Do you recall reviewing an Excel spreadsheet?
Can you be more specific about the Excel spreadsheet?
Q We'll look at some -- so maybe that's the better way and we'll see if you can help me out on that.
When you say that you reviewed assumptions, what assumptions did you review?
Primary assumptions were the parables that supported specific valuations.
Q Do you recall if there were specific assets that you reviewed the assumptions for?
I believe one of the primary assets was 40 Wall Street, the Old Post Office and the Old Post Office in Washington, D.C.
Q ny others?
Not that I can recall.
Q Did you review any assumptions for the golf courses?
I did not, no.
Q How about Mar- -Lago?
I recall reviewing assumptions on comparables for that property.
Q s you sit here today, do you recall reviewing assumptions for any assets other than what we've just discussed?
No.
Q nd did you -- when you reviewed assumptions, did you

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also review in addition to -- I think you said comps. Did you review capitalization rates?
I believe so.
Q Who did you work with in connection with your participation on the 2020 Statement of Financial Condition?
It was llen Garten, dam Rosen, llen Weisselberg, Jeff McConney, and Patrick Birney.
Q Do you recall -- just to see if it refreshes your recollection, did you look at any assumptions in connection with the assets held by the Vornado Partnership Interests, 1290 venue of the mericas and 555 California Street?
I don't believe so, no.
Q Did you review any language of the 2020 Statement of Financial Condition in draft form?
I believe I reviewed some excerpts that were meant to go into the draft of the Statement of Financial Condition.
Q nd who provided you with those excerpts?
I don't recall.
Q To your understanding when you were working on the preparation of the 2020 Statement of Financial Condition, who had final approval of the methodologies used and the assumptions made?
I don't know.
Q So you didn't have any understanding among the group that you were working with who had final approval?

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No, I did not.
Q nd you continued to work on the preparation of the statement through March of 2022 when you left; is that right?
I recall working on the 2020 statement. I can't recall if I worked on the 2021 statement.
Q nd my question was a little bit different, though. I just want to know if you have a recollection of continuing to work with the group on the preparation of the statement all the way through when you left in March of 2022?
No, I don't recall.
Q Do you recall participating in a call in the fall of 2021 with others to discuss valuation methods?
I don't recall.
Q Let's go ahead and talk about some work you did with respect to the golf clubs. Were you aware that for some golf clubs members paid a refundable membership deposit?
I do.
Q nd were the refundable membership deposits something that you were tasked to keep track of?
I was.
Q nd who tasked you to keep track of those membership deposits?
I believe it was Eric Trump.
MR. MER: Let's go ahead and mark Plaintiff's

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Exhibit 2041.
Q Mr. Flores, do you see page one and page three are e-mail exchanges that you are included on?
I see that.
Q nd the second and fourth pages are slip sheets for the attachments that are native files.
MR. MER: Your Honor, I ask that this be admitted into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2041 in evidence.)
Q Let's look at the third page. nd this is an e-mail to -- from Ian Gillule to Eric Trump and you are cc'd on this e-mail?
Correct.
Q nd the subject is "Trump Westchester Membership Deposit and Resignation Spreadsheet." Is that the same golf course that's also known as Briarcliff?
I believe so.
Q nd Mr. Gillule writes in the second paragraph: "Per your e-mail to Karen, I've put together the information you've requested. Please see the attached spreadsheet containing two tabs, one with membership deposit

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information and the second tab with the resignation lists." Do you see that?
Yes.
Q To your knowledge was membership deposit information something that Eric Trump was interested in tracking?
Yes.
Q nd do you have an understanding as to why he was interested in tracking that information?
I don't know.
Q I think you testified, though, that he tasked you with tracking the information; correct?
Beyond tracking the information, I don't know why he wanted me to do that.
Q He asked you to do it but he never told you why he wanted you to do it?
Correct.
Q Okay. If you go to the e-mail on the first page, the bottom e-mail, that's from Eric Trump to you; correct?
Correct.
Q nd he says to you: "I wanted to introduce you to Brian, our new GM at Trump National Westchester. Brian is going through all the files and getting everything perfectly organized. Why don't you link up next week and take him through all of your spreadsheets for the property. He is working on a few addendum as we speak and they probably need to be update" --

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should be, I think, "updated as it was probably a year ago that these were created. I leave it to you to connect." See that?
Yes, I see this.
Q nd then you write to Brian in the top e-mail: "Hope all is well and welcome to the team. Per Eric's e-mail below, I've attached a workbook I put together last summer when Eric asked me to coordinate with all the clubs to summarize membership liabilities." Do you see that?
Yes.
Q So is it correct that in the summer of 2014 you were asked by Eric Trump to coordinate with all the clubs to summarize membership liabilities?
That's what the e-mail says, but I can't recall.
Q Do you have any reason to believe based on what you've written to Brian that that wasn't the case?
No.
Q nd is the workbook being referenced here material that was tracking the membership deposit liabilities?
It was one form of tracking the liabilities. I believe the accounting team at the property also tracked the liabilities as well.
Q Okay. So this was something you started doing in the summer of 2014; correct?
I don't recall when I started tracking the liabilities

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for this club.
Q Well, you wrote to Brian saying that you started working on the attached workbook last summer; right?
That's what that e-mail says, but I -- the starting point of tracking, I can't recall if that summer or might have been prior to that.
Q It was at least as far back as the summer of 2014?
I believe so.
MR. MER: Let's put up Exhibit 2041, native one.
Q Do you recognize this, Mr. Flores, as one of the spreadsheets that was an attachment to this e-mail?
This tab looks familiar.
MR. MER: Your Honor, I'm not sure if we're admitting separately the native files or whether they're all in with the initial e-mail.
THE COURT: It's simpler with the initial e-mail, I think.
MR. ROBERT: I figured it was with the initial e-mail.
THE COURT: Good.
Q nd then if we go to native two of the Exhibit 2041. This is entitled registration list.
nd then if you click on the first tab -- I'm sorry -- "Resignation List." nd then the first tab is "membership refundability." Do you see that?

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Yes, I can see that.
Q nd so is this -- are these spreadsheets the spreadsheets you created to track membership deposit liabilities?
Not this spreadsheet, no.
Q Was this one of the attachments to the e-mail as far as you could tell?
I don't know.
Q Does this track membership deposit liabilities?
That's what it appears to track, but I did not produce this.
Q Do you know who did prepare this?
I don't know.
Q Did you prepare spreadsheets like this to track the membership deposit liabilities?
Yes, they contain similar types of information, but I did not produce this document.
MR. MER: Let's look at Row 345.
Q So based on your familiarity with preparing spreadsheets that track membership liabilities are you familiar with what this row is reflecting?
Can you scroll back up to the top, please? nd can you scroll back to Row 345? I don't know what that row number represents.
Q Well, it says "total," right?

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It is a total but -- yes, it's a sum of columns E and F.
MR. MER: Let's look at another document, PX 2040.
Q Mr. Flores, this is a series of e-mail exchanges you have with Heidi Brzyski at TrumpNational.com; correct?
It appears to be what this is.
Q nd it has some slip sheets for some attachments that are part of this e-mail exchange.
MR. MER: I'd move to admit this into evidence with the attachments.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2041 in evidence.)
Q Mr. Flores, let's look at the bottom e-mail on page one. You're writing to Ms. Brzyski. nd who is she, by the way?
ccording to this e-mail she is the general manager of Colts Neck.
Q That's one of the Trump golf courses; correct?
I believe -- correct.
Q nd you write to her:
"Hope all is well. I'm working with Eric to update our records on the total membership refundability across our

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courses. Can you please send us your current spreadsheet and full resignation list with names, refund amounts, and any other permutations or notes for everyone with a refund obligation;" correct?
Yes, that's what this e-mail says.
Q So this was October 2015 and this was part of your undertaking to update records on total membership refundability; correct?
I believe so.
Q So did you send similar e-mails to managers of other golf courses within the Trump Organization to collect similar information to allow you to update the records on membership refundability?
I did.
Q nd you were doing that in connection with direction given to you by Eric Trump; correct?
Correct.
Q nd in the top e-mail she sends you back the refundable deposit list and resignation list; correct?
That's what the e-mail says, correct.
MR. MER: Let's go ahead and mark 3212.
Q You see this is -- the top e-mail is an e-mail exchange that includes you as a carbon copy; correct?
That's what the e-mail says, correct.
Q nd the subject is "golf liabilities." Do you see

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that?
Correct.
MR. MER: Your Honor, I ask that this be admitted into evidence.
THE COURT: Granted.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3212 in evidence.)
Q Let's look at the top e-mail that you were copied on. Says, "Hope all is well." nd this is being sent in March of 2017. Do you see that?
Yes.
Q nd it's from Jonathan Etra at the Trump Organization. He's -- is he somebody who is within the same team as you?
Yes, he was.
Q He writes to a woman named Gina Galeros, "Hope all is well. Per Eric Trump's instruction we are having each golf property with membership liabilities begin utilizing the corporate liabilities matrix attached which is based off information provided by you and updated as of 12/31/2016."
Was this matrix that Mr. Etra is referring to something that you and he began using to track membership deposit liabilities?
I don't -- do you have a copy of the attachment? I don't know what it looks like.

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Q I'm just asking for your best recollection, Mr. Flores.
No, I can't recall if the attachment referenced in this e-mail was what you're asking.
Q So I'm not -- my question wasn't specific to the attachment. It was just very generally do you have a recollection of using a matrix in this time frame to reach out to the golf clubs for tracking membership deposit liabilities?
Yes.
Q nd was Mr. Etra working with you on this project at this point in time?
I believe so.
Transcript continues on the following page....

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Q nd again, this project using this matrix to track membership deposit liabilities was something that was being done per Eric Trump's instruction, correct?
Yes.
Q Did you continue to be involved in tracking the refundable membership liability -- the membership deposit liabilities at golf courses that had such deposits until you left in March of 2022?
Yes.
Q nd throughout that time, it was being done by you and others on your team at Eric Trump's direction; is that right?
Yes.
Q Let's look at the 2017 Statement of Financial Condition which is in evidence as Plaintiff's Exhibit 755. So Mr. Flores, I think we established that you were not aware of this document at the time that it was issued, correct?
That's correct.
Q In connection with your work on the 2020 Statement of Financial Condition, you did see excerpts from the then in draft statement, correct?
I believe for prior statements, I reviewed a spreadsheet with underlying information.
Q My question was a little different, and I thought I heard you testify before that for the actual Statement of Financial Condition that you were working on in 2020, you did

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see some excerpts from it?
Correct; but for prior statements, I had not.
Q Right.
Let's go to page 11 of 24 in this exhibit and let's go to the Colts Neck section. If you scroll up a little bit. I just want to read to you the last couple of sentences in that paragraph. nd we were looking, by the way, at the exchange with the manager for Colts Neck about tracking the membership liabilities. Do you recall that?
Yes.
Q Okay. In this Statement of Financial Condition, this is the final version that was issued for 2017. It says, "Prior to June 1, 2010, one condition of membership was the contribution of a non-interest-bearing deposit that does not require repayment until certain terms are met and then only upon the member's resignation. The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led the trustees to value this liability at zero and not its present value." Do you see that?
Yeah, that's what this document says.
Q Is it the case, Mr. Flores, that while the trustees were valuing the membership deposit liabilities at zero, you and others were working to track the membership deposit liabilities across the clubs at Eric Trump's direction?

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That's correct.
Q Just to make sure the court reporter got it, you said "that's correct"?
Yes.
MR. MER: Okay. Can we put up next to this, side by side, the 2020 statement which is Exhibit 856 in evidence. If we could go to -- I think it's page 9 of 21, but it is the Colts
Neck -- yes.
Q You'll see, Mr. Flores, the same language appears in this document. Prior to June 1, 2010, one condition of membership was the contribution of a non-interest-bearing deposit that does not require repayment until certain terms are met and then only upon member's resignation. The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led the trustees to value this liability at zero and not its present value." Same language, right?
That's correct.
Q Was this language language that you reviewed in connection your work in preparing the 2020 Statement of Financial Condition?
No.
Q But it does appear that while the trustees were valuing

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the membership deposit liabilities at zero for purposes of the 2020 Statement of Financial Condition, that you yourself were helping to prepare -- you and others were tracking those deposit liabilities at Eric Trump's direction, correct?
Correct.
Q I want to shift to a different topic. Do you recall that there came a point in time when you were helping prepare the Statement of Financial Condition, that the methodology for valuing golf clubs in 2020 changed?
I don't recall.
Q Okay.
MR. MER: Why don't we put up the 2021 supporting data spreadsheet and it is Exhibit 352 in evidence. I would like to look at Briarcliff which begins on row 289.
Q So let me first ask looking at this spreadsheet, is this the spreadsheet format that you reviewed in connection with your work helping to prepare the Statements of Financial Condition?
I believe for the 2020 statement, correct.
Q If you look at row 308, you'll see it says, "6/30/20, upon the advice and guidance of Marcus & Millichap, golf course industry experts, we left the golf course value unchanged from 2019." Do you see that?
Yes, that's what the document says.
Q Then if you look at row 306, it says, "Upon the advice

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and guidance of Marcus & Millichap, golf course industry experts, a normal golf course with a negative EBITD trades at two to three times gross revenue. We took on average of three times gross revenue and net fixed assets." Do you see that?
That's what the document says.
Q Do you recall participating in a telephone call with Marcus & Millichap where the subject of this new methodology was discussed?
No.
Q You have no recollection at all about participating in that telephone call?
I don't.
Q You see where it says, "We took an average of three times gross revenue and net fixed assets." Did you play any role in the decision to average those two numbers for purposes of the valuation in 2021?
No.
Q So the idea of averaging the net fixed assets and the three times gross revenue, you're certain that would not have been a suggestion that came from you?
I -- I don't believe so.
Q Well, as you sit here today, do you have any recollection whatsoever of suggesting to anybody who was working with you in preparing the statement that those two figures should be averaged for purposes of preparing the valuation for

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the golf courses?
I -- I can't recall.
Q Let's look at -- well, did you have any discussion with people who you were working with in preparing the Statement of Financial Condition at any point in time prior to when you left the company about using two to three times gross revenue where there was a negative EBITD to value golf courses?
I don't recall, no.
Q Do you have any recollection of discussions about how to value the golf courses where the golf course had a positive EBITD ?
I don't recall.
Q Let's look at row 363, which is for Colts Neck. You see in this row it says under the note, "6/30/21, upon the advice and guidance of Marcus & Millichap, golf course industry experts, a normal golf course with a consistently positive EBITD trades at six to eight times EBITD , but the last few purchases have been nine to ten times. Based on the quality of Trump courses could sell at ten times EBITD ." Do you see that?
Yes, that's what the document says.
Q nd then you'll see under rows 375 to 376, this is a calculation that, in fact, uses this multiplier ten times EBITD . Do you see that?
That's what the spreadsheet says.
Q Do you have any recollection of discussing with those

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individuals who you worked with in preparing the Statements of Financial Condition at any time prior to leaving the organization in March of 2022 this method of calculating values for courses with a positive EBITD ?

No.

Q I just want to be clear about this. If we have had testimony from others in this case that you participated in a telephone call with Marcus & Millichap where these valuation methodologies were discussed, does that refresh your recollection at all that you were a participant in those discussions?

No.

Q nd if we have testimony in this case from others that it was your idea to average the net fixed assets with the two to three times gross revenue multiplier for purposes of valuing golf course assets, does that refresh your recollection?

No.

Q Do you have any recollection whatsoever at any point in time working on the valuation of the preparation of the valuations for the statements of discussing these valuation methods that are attributed to Marcus & Millichap?

No.

Q Let me focus your attention on the Jupiter Golf Course. You're familiar with that course down in Florida, correct?

Correct.

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MR. MER: Let's mark 3216.

Q You see this as an e-mail from Michael Corbiciero to you?

Yes, that's what in appears to be.

Q nd this is sent in ugust of 2020, correct?

Correct.

Q You see the subject is the "Jupiter appeal recommendation"?

Correct.

Q nd who is Mr. Corbiciero?

I believe he was a consultant, a tax certiorari with Marvin F. Poer.

Q You said he was a consultant for the Trump Organization, correct?

Correct.

MR. MER: Your Honor, I move this exhibit into evidence.

THE COURT: It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3216.)

Q nd the firm he is with Marvin F. Poer & Company. If I just refer to that as Poer & Company, is that okay? Can we refer to that as Poer & Company?

Yes.

Q I think you mentioned tax certiorari. Is that a fair

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characterization of one of the services that they provided?

Yes.

Q nd did that firm handle property tax assessment appeals in Florida for the Trump Organization?

They did.

Q nd Mr. Corbiciero is sending you the 2020 proposed tax notice for Jupiter; is that right?

I believe so.

Q You see in the first line of the e-mail it says, "We hope this e-mail finds you both well. ttached are the 2020 proposed tax notices for the Trump National Jupiter Golf Course as well as some appeal review information for your reference." So he's sending you the proposed 2020 tax notices for Jupiter, right?

Yes.

Q So what was your role in regard to the Jupiter 2020 tax notices?

I believe I was working with Poer to review the assessment and whether to appeal the assessment.

Q t this point in time, you would have been reporting to Eric Trump and Donald Trump Jr.; is that right?

Correct.

Q Mr. Corbiciero goes on to say, "The 2020 combined proposed market value is $16,672,472 which is a two percent increase over last year's value;" is that right?

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That's what the e-mail says.

Q So when you read this e-mail, you understood that the value was a proposed market value for Jupiter, correct?

That's correct. That was coming from the tax assessor.

Q nd then the next paragraph starting in the second sentence of that paragraph says, "Using the same methodology as in previous years" and let me just stop here and ask. Had you been involved in this process in prior years for the Jupiter tax notices?

Yes.

THE COURT: Five-minute warning.

Q So when Mr. Corbiciero writes, "using the same methodology as the previous years," you would have been aware of what those -- what that same methodology had been, right?

I believe so.

Q nd he goes on -- so he goes on to say, "Using the same methodology as in previous years, we determined a GIM of 1.38 which is below the average of 1.45 from the SG report." Did you understand GIM to mean gross income multiplier?

Yes.

Q Is that synonymous with gross revenue multiplier?

I don't know.

Q Did you understand that GIM was a multiplier that would be multiplied by the gross income for the club?

Yes.

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Q nd do you know what he's referring to when he refers to the SG report?
I don't recall.
Q He goes on to say, "We also reviewed the most comparable assessments which mostly increase between one to four percent over last year's values and support a range of 503,778 per hole to 1,335,269 per hole." Do you see that?
I do.
Q nd Jupiter is an 18-hole golf course, correct?
I don't recall the exact number of golf holes.
MR. MER: I don't think it is a matter in dispute, so I'll represent that it is an 18-ole course.
Q Now, in terms of the methodology that is described here, you would agree with me there's no mention of using a different methodology other than the gross income multiplier method, do you?
Sorry. Can you repeat the question?
Q Sure. The only methodology that Mr. Corbiciero is referencing here is the methodology that uses a gross income multiplier; isn't that right?
He also references a comparable assessment approach.
Q Nothing about a fixed assets approach, though, correct?
Not in this e-mail, no.
Q Then in the fourth paragraph, he says, "Based on the information provided and current market data, our analysis of

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the subject property indicates that the market value is reasonable." Do you see that?
I do.
Q The market value that he's telling you he believes is reasonable is the value -- market value of 16.7 million, right?
Yes.
MR. MER: If -- am I at my time, Your Honor?
THE COURT: Well, you have two minutes or you can quit now.
MR. MER: I was going to put up another exhibit, so maybe it makes sense to --
THE COURT: It makes sense to break now. Okay. 15 minutes, everybody. See you at a quarter to noon.
MR. KISE: I will hopefully have an update for you on the question you asked earlier before the witness comes in after the break on the numbers.
THE COURT: I understand. Great.
(Witness exits the stand.)
(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
MR. KISE: I do have some numbers. There is some good news under the circumstances.
THE COURT: I'd love to hear them.
MR. KISE: gain, this is my understanding just to

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be clear. I'm not the tech person, but this is what I've been advised this morning. So the e-mail that goes out, the ICYMI, In Case You Missed It, e-mail does not go out on the broader distribution list. That's a press e-mail. It is 25,810 recipients. So while that is still a number, it is not millions. It is not -- it's not what -- what we had talked about before. It doesn't go -- that's not the broad distribution list.
So there were 25,810 recipients on that e-mail link or e-mail chain. Of that, there were 6,713 that opened the e-mail and then we go from there to the website because -- so that covers the e-mails. There's 25,810 e-mails, 6,713 that were opened.
The e-mail sends you to the link, the link. So between October 3rd and October 19th, there were a little over 114 million visitors to the campaign website, total visitors to the campaign website. However, only 3,701, 3-7-0-1, viewed the -- they're called unique views, viewed the posting, viewed this posting that is the subject of what we're talking about today. That would include anyone that received the e-mail. So they're not separate. So of the 6713 folks that got the e-mail, if they were to click on the link, they would have been counted in that 3,701 individuals that viewed the post.
But again, of the 114 million plus visitors to the

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website, they didn't view the post. You have to click through layers to get there, but that's -- and if the Court has further questions about the numbers, but that is the breakdown that I have for now. I may be able to break it down by day, October 3, October 4, 5. I just don't know if it would matter.
THE COURT: That wouldn't matter.
MR. KISE: But there are 3,701 total viewers of the post that is in question which again, as I've said, has since been taken down.
THE COURT: Well, you and I are both becoming more tech savvy from all this.
MR. KISE: pparently. Thank you, Judge.
THE COURT: Witness, please.
THE COURT OFFICER: Witness entering.
(Witness resumes the stand.)
MR. KISE: Just one thing. I know the witness is there, but it won't relate to testimony. I'm looking at the realtime. The 3701 is the number of people that did view the post, not did not.
THE COURT: We understood.
MR. KISE: I know, but on the record, it said didn't view the post, so that's an important distinction.
THE COURT: 180 degrees.
MR. KISE: Yes.

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THE COURT: nd 114 million people. ll right. Let's continue with the direct examination of Mr. Flores.
Q Welcome back, Mr. Flores. We were looking at Exhibit 3216. I did want to point one thing out before we go to the next exhibit.
You were correct to note that in addition to the gross income multiplier method, Mr. Corbiciero also looked at comps, right?
Correct.
Q nd if we go to page 10 of 14, in the -- in this exhibit, page 10 of 14, this is a chart of comps and I did want to point out, so that nobody has to take my word for it, in fact, the Jupiter Country Club, line nine, has 18 holes. You see that?
That's what the document says.
Q Okay. nd well, we'll come back to that in a minute.
MR. MER: Let's go ahead and put up -- go back to the first page of the exhibit, so we could see Mr. Corbiciero's e-mail and let's put up the 2021 Jeff supporting data spreadsheet which is Exhibit 1352. We can do that next to this e-mail. nd let's go to row 547, which is where we find the Jupiter club. Let's just go up, so we can see that it is the Jupiter club and if we could see 547 and then slide it over, so we see the two values.
Q So Mr. Corbiciero's letter references market value

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which he views as reasonable of 16 -- roughly 16.7 million and in the Statement of Financial Condition value for 2020, it is 73.6 million roughly and in 2021, it's 67.7 million. Do you see that?
MR. KISE: Objection. I'm not sure that characterizes the two exhibits accurately.
MR. MER: I think the numbers are what they are. If he has an argument to make at closing whether those numbers are numbers that should be compared, that seems to be something that should wait for closing.
THE COURT: Or cross-examination.
MR. MER: Or cross-examination, but I think they said they weren't going to cross-examine this witness.
MR. KISE: Not today, certainly.
THE COURT: Not even one question?
MR. KISE: I don't think so. Why would we keep us here any longer?
THE COURT: I'll overrule the objection subject to any correction that somebody comes up with.
Q Now, if we go back to the e-mail on the comparable assessments method, there is a range that Mr. Corbiciero provides for price per hole. Do you see that?
Yes.
Q I'll represent some math to the Court that if you take even the high end of the range and you multiply it by 18 for 18

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holes, you end up with about 24 million.
THE COURT: Okay. I'll accept that subject to any correction MR. MER: Thank you.
(Continued on the next page.)

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Q nd you had received Mr. Corbiciero's e-mail prior to the time that you began working on preparing the 2020 Statement of Financial Condition; correct?
I believe so.
Q Well, you received the e-mail in ugust and I think we established you began to prepare -- your work preparing the 2020 Statement of Financial Condition sometime in late 2020; right?
Yes.
Q Okay. Now, on the subject of your work helping to prepare the 2020 statement about how much time would you say you devoted to that endeavor?
In late 2020, I believe it was maybe two to three hours a week.
Q nd over the course of how many weeks?
I don't recall.
Q Was it months?
It could have been.
Q Let's turn to a different property, the property called Niketown here in New York.
You're familiar with that property; correct?
Yes.
MR. MER: Let's put up the 2020 Jeff Supporting Data. It's Exhibit 857 in evidence, and let's go to Row 88, which is where Niketown begins.
Q Do you see that?

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Yes.
Q nd I want to focus on the difference between the valuation that was used in 2020 and the valuation method that was used in 2019. You'll see there is a number of rows and steps that go into the calculation in 2019 that start on Row 88 and go all the way through 103 and lead to a value of 445 million. Do you see that?
Yes.
Q nd for 2020 there is a single row, Row 104, that says, "Value per 20-year discounted cash flow from Ray Flores." Do you see that?
That's what the document says.
Q Did you perform such an analysis on Niketown for 2020?
I don't recall.
Q Do you have any recollection whether related to the Statement of Financial Condition or not of preparing a 20-year discounted cash flow analysis for the property?
No, I don't recall.
Q Did you prepare a 20-year discounted cash flow analysis for Niketown in any prior years to the best of your recollection?
I may have, but can't recall the specific cash flow.
Q Can you think of any business purpose for why you would have been preparing a 20-year discounted cash flow analysis for Niketown?

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Not that I can recall.
Q If we go down you'll see starting in Row 110 there is a discussion. It says "6/3/2020." It says "4-6 East 57th." Is that the Niketown address?
Yes.
Q Says "it has historically been occupied by a single tenant given the current tenant's lease expiration in May '22, the discounted cash flow takes into account a new single tenant user." Do you see that?
Yes, that's what the document says.
Q nd it's referring to the 20-year discounted cash flow and it claims to be from you. Do you see that?
That's not what that references, a discounted cash flow.
Q For 6/30/2020 in the notes in Row 106, which is where the value from 6/30/2020 comes from, says, "Value per 20-year discounted cash flow from Ray Flores;" right?
That's what the document says, but the row in 110 doesn't reference 20 years nor my name.
Q It references a discounted cash flow, doesn't it?
Yes.
Q Does reading that refresh your recollection that you prepared a 20-year discounted cash flow analysis for Niketown?
No, I don't recall.
Q It goes on to say that it used the 2020 Gucci renewal

R. Flores - Plaintiff - direct (mer) Page 2077

as the most recent comparable given close proximity to 4-6 East 57th Street and similar luxury retail presence on both blocks. Does that refresh your recollection that you prepared a 20-year discounted cash flow analysis for Niketown?
No, can't recall.
Q nd then it says, "Kandell ground lease is subject to a pending rent reset to be determined by an appraisal proceeding." Do you see that?
Yes.
Q Do you recall a rent reset appraisal proceeding that involved the Kandell ground lease?
Yes.
Q nd the ground lease is one of the two ground leases that Niketown was subject to?
Yes.
Q nd what was your involvement in connection with the appraisal proceeding to determine the rent reset?
I believe I interacted with the appraiser that the company engaged in relation to this process.
Q nd do you have any recollection of incorporating a rent reset into an analysis that you did of the property?
I don't recall.
Q That doesn't ring a bell for you?
No.
Q Okay. nd then it goes on to say, "In the absence of

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the final determination we assume the same amount of the prior period." Do you have any recollection of using the rent from the prior period for a going-forward analysis pending the reset appraisal proceeding?
No, I don't recall.
MR. MER: Let's go ahead and mark Plaintiff's Exhibit 860 in native. It's just a slip sheet placeholder for this spreadsheet.
Q You will see that this is a 20-year cash flow analysis; correct?
Can you scroll to the right, please?
Q Sure.
MR. MER: Scroll all the way to the right.
Can you continue to scroll, please?
Q That's as far as it goes.
Okay. That's leaves 20 periods.
MR. MER: nd go back to the left.
Q nd you see Row 4, "20 years." See that?
That's what the document says.
Q Okay. Do you recognize this as a spreadsheet you prepared that's a 20-year cash flow analysis for Niketown?
It looks familiar. I'm not sure. I didn't put this together.
Q Well, do you recognize it as your work or not, Mr. Flores?

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I don't -- I don't know.
Q You don't know? You can't tell us whether you did this or somebody else did this?
MR. KISE: Objection. Leading. This is direct and argumentative.
MR. MER: Well, first, I don't think it's leading because I didn't suggest the answer.
THE COURT: Overruled. Not leading.
Q Can you answer the question?
I don't recall if I put this together.
Q Let's look under the "value" tab.
Do you see that there is an NPV value in Row 14?
Yes, this is what the document says.
Q nd do you looking at this spreadsheet understand that's net present value?
Yes.
MR. MER: Your Honor, I move this exhibit into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 857 in evidence.)
MR. KISE: What was the date of this again? It's not on the sheet. Year, do we know?
MR. MER: It's 2020.

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MR. KISE: 2020, okay. Fine.
MR. MER: nd actually, one way to do that is if we go back to the -- go back to the Jeff Supporting Data and we can split the screen.
Q nd you see the value for June 30, 2020 is 252.8? Do you see that?
That's what the document says.
Q nd that comes -- that matches the number if we go back to the cash flow analysis that's on the NPV line; correct?
Can you put the documents side by side, please? nd scroll to the right to the document? On the right.
MR. MER: I think we need to go down to see the -- we're in a different -- we're on Wall Street, so we need to go back to Niketown and go to the right for Row 106.
Q Same number, right?
Yes. The number in cell H 106 on the right hand matches the figure D in cell D 14 on the left hand.
Q If we go back to the spreadsheet, the -- sorry.
The cash flow analysis and there are two other tabs. There is a "plan" tab.
MR. MER: Can we click on that?
Q nd then a "ground lease" tab.
MR. MER: Let's click on that.
Q nd that shows the ground lease amounts and the Kandell lease is 540,000. Do you see that?

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Yes, that's what the document says.
Q Does looking at these tabs refresh your recollection, Mr. Flores, that this 20-year cash flow analysis is your work product?
It could have been, but I don't recall this specific document at this moment.
Q Do you know what the basis was for assuming that the -- or deciding to use the prior rent amount for the Kandell lease while the reset appraisal proceeding was pending?
No, I don't recall.
Q Do you know the outcome of the appraisal proceeding to reset the rent on the Kandell lease?
I don't remember.
MR. MER: Why don't we look at Exhibit 3213.
Q I think you mentioned that you worked with the appraiser who was hired by the Trump Organization to work on the rent reset proceeding; is that right?
Yes.
Q If you look at the last page, 12 of 12, was that appraiser David Fields of Fieldstone dvisers?
Yes.
Q nd does this last page appear to be the agreement that was reached on March 13, 2021 as to what the rent reset would be for Niketown?
MR. KISE: Objection. Foundation.

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MR. MER: He said he worked with Mr. Fields on this very proceeding.
MR. KISE: Right, but he's not -- he didn't testify to anything about this document. You're just showing him a document at random and I don't think he can attest to what's written on the document. He can read what's written on the document, but it's hearsay. The document itself is hearsay, so the witness hasn't demonstrated that he has any foundation to answer the question.
MR. MER: He does have foundation. He said he worked on this proceeding. How is that not foundation to be able to recognize if this is the agreement that resolved the proceeding?
MR. KISE: But he never -- he might not have ever seen the resolution. He might not have participated in the resolution.
MR. MER: Then that's his answer.
THE COURT: Overruled on the ground last stated, if that's his answer, that's his answer.
Do you need a read back or ask it again or --
Q Do you -- given your involvement in the proceeding to reset the rent do you recognize this last page as the agreement that was signed between the two appraisers arriving at the rent reset amount?
No, I don't recall reviewing this specific page.

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Q I didn't ask you that. I just asked if you -- you're in a position given the involvement you had in the proceeding to recognize this as the final agreement reached between the two appraisers?
MR. KISE: Same objection.
Q Yes or no?
That's what the document says.
THE COURT: Overruled. It's --
Q That wasn't my question.
THE COURT: It's a subtle question. sk it again and we'll get a read back.
Q Given your involvement in the proceeding, Mr. Flores, are you able to tell us that this is the final agreement between the two appraisers resetting the rent for Niketown?
That's what the document appears to be.
MR. MER: Your Honor, I move this into evidence.
MR. KISE: Your Honor, it's complete hearsay. The witness has just answered that's what the document appears to be, but he's not on the document, it's not addressed to him. There is no foundation. He hasn't acknowledged that he ever reviewed the document. I don't see how it comes into evidence. It's simply hearsay.
MR. MER: Your Honor --
MR. KISE: If they want to call Mr. Nakleh, if they want to call these witnesses that are participating in this,

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this witness has said -- all he said at most "this is what it appears to be." ny of us can say that. That's not a foundation for admission into evidence.
THE COURT: Yes, but he worked on the project.
MR. KISE: But he says he doesn't recognize this as the final resolution.
MR. MER: Can I be heard, Your Honor? CPLR 4549 is a recognized exception to the hearsay rule. It says:
" statement offered against an opposing party shall not be excluded from evidence as hearsay if made by a person whom the opposing party authorized to make a statement on the subject or by opposing party's agent or employee on a matter within the scope of that relationship and during the existence of that relationship."
Mr. Fields was retained as the Trump Organization's agent to act as their appraiser in this proceeding. This is not hearsay and it comes in for all purposes under 4549.
MR. KISE: gain, I don't -- without getting into a long debate, I don't agree at all with that. Mr. Fields can come and testify and bring it in that way. That would be a statement, but this is an out-of-court statement offered to prove the truth of the matter asserted.
If Mr. Fields were here himself and he testified to what's in this document that would be the subject of what's covered under the rule, but some document that is just out

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there that they're alleging is a statement by our agent, no.
THE COURT: Well, the witness -- I want to make sure we're on the same page or at least I'm on the right page.
The witness said he worked on this project. He says yes, this looks like the resolution of the project on which he worked. Overruled. It's in evidence.
Q nd the agreement resets the rent to $892,500; correct?
That's what the document says.
Q nd that's almost twice what the rent had been prior to the reset. Isn't that right?
I believe so.
MR. MER: nd let's put up the native of Plaintiff's Exhibit 2222.
Q This is the 20-year discounted cash flow for Niketown for 2021. Do you recognize this as another 20-year -- well, do you recognize this as a 20-year discount cash flow that you prepared for Niketown?
It could have been, but I don't -- I can't recall in this moment.
Q Let's look under the "ground lease" tab.
Do you see that the ground lease amounts for Kandell in this cash flow analysis is the amount that was agreed to between the appraisers; right?
Yes.

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Q Looking at the prior cash flow analysis, looking at this cash flow analysis and bearing in mind your involvement in the rent reset proceedings, are you able to confirm that this is your work product?
It could have been, but I don't know in this moment. I can't recall.
Q Do you have any understanding as to why a cash flow analysis would be using the new rent reset amount as opposed to the prior amount?
Because that was the actual rent at that point of time. That's what I think it meant, but --
Q So once the rent reset proceedings had been resolved and the new rent had been established at an amount that was almost twice the old rent, your understanding is that it would make sense to use the new rent amount; correct?
MR. KISE: Objection. I think this question and, frankly, the last one is calling for speculation because the witness just testified that he's not sure this is his work product. Is he asking him to speculate? Because that's what his answer was to the last question. It would seem so.
MR. MER: Your Honor, I don't think it's asking a witness who is involved in the reset proceeding what his understanding was as to what use the new rent would be put to.
THE COURT: I think it was -- it's a question in

the abstract anyway, but it's logic.
MR. KISE: But that's speculation. He said right there the answer to the last question it could have been, but I don't know. So it's calling for speculation. He clearly doesn't know.
THE COURT: Well, Mr. Flores, don't speculate, but answer the question.
MR. MER: Your Honor, can I have a read back, please?
THE COURT: Sure.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Yes.
Q nd if we look at the "value" tab again, you see that the value, the NPV value in Row 14 is 225.8 roughly million dollars; correct?
That's what the document says.
MR. MER: nd if we can pull up the 2021 Jeff Supporting Data spreadsheet. It's 1352 in evidence.
Q nd look, compare that to Row 91, Row 91.
nd by the way, just to go back a little bit again. You'll see in Row 89 it says, "Value per 20-year discounted cash flow from Ray Flores." Do you see that?
That's what the document says.
Q nd then it gives the values in 2021 and 2020.

MR. MER: If we go over.
Q The 2021 value matches exactly the value for NPV in Row 14 of the 20-year cash flow analysis; correct?
That's correct.
MR. MER: Your Honor, I move to admit Exhibit 2222.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2222 in evidence.)
Q nd you'll see in Row K it's tracking the difference and the value has dropped by 27 million from 2020 to 2021; correct?
Yes.
Q nd based on your understanding of how the rent fits into the formula, if the rent nearly doubles that would decrease the value of the property; right?
Yes.
Q You mentioned and we've established you were involved in the rent reset proceeding. Did anyone from the Trump Organization to your knowledge attempt to get a preliminary indication from an appraiser on what the likely rent reset would be before the 2020 Statement of Financial Condition was issued?
I don't recall.
Q Do you know when the Trump Organization engaged an

appraiser for the appraisal proceeding to obtain the rent reset amount?
I can't recall.
Q Let me show you Exhibit 3215. This is a retainer for Fieldstone dvisers. You'll see under the "Scope of Engagement" it says, "David E. Fields will serve as client's party-appointed appraiser for purposes of the appraisal proceeding."
Do you see that?
That's what the document says.
Q nd above there is a reference to the Kandell lease. Do you see that?
Yes.
Q nd if you turn to page two this document is signed. One of the signatories is Eric Trump; correct?
It's what the document appears to show.
Q nd did Eric Trump assign you to oversee the rent reset proceeding?
Not to oversee it, but I was involved in this proceeding.
Q Well, did you become involved at his direction?
Yes.
MR. MER: Your Honor, I move Exhibit 3215 into evidence.
MR. KISE: Your Honor, again, I don't think the proper foundation has been laid. If they want to have

Mr. Trump lay the foundation or Mr. Fields lay the foundation, I mean, the fact that this witness had some involvement in the process, if we're going to use that as the standard for admission of what is clearly hearsay that would be a giant black hole. It could be anything. ny document associated with the process would then come in under that standard. They could just ask him "were you involved?"
"Yes, I was involved."
" nd is this a document that looks like it has something to do with the process?"
"Yes."
So there is just no foundation at all laid for the introduction of hearsay. They have not. t this moment it's hearsay. If they want to call a witness that can actually get the document into evidence, that's fine, but this is not that witness.
MR. MER: I want this for purposes of notice as to when the appraiser was hired. So maybe we can shortcut this. This is a Trump Organization document and it's signed by Eric Trump and I'm only offering it for purposes of the date of the letter, which January 18, 2021.
THE COURT: Well, the date of the letter is -- I understand that impacts directly on notice, if that's what you want it in for. I can't see it.

Objection sustained only to the extent it's only going in to show a notice by the Trump Organization by Eric Trump, right.

MR. KISE: By whom? It's a Trump Organization document by Eric Trump even though he hasn't testified to it? I'm not suggesting he wouldn't, but I just want to be clear what we're putting it in for.

THE COURT: This witness says he signed it. It says name his Eric Trump.

Do you recognize the signature, Mr. Flores?

THE WITNESS: Yes.

Transcript continues on the following page....

Q By the way, we've already established through your testimony that David fields was, in fact, hired as the Trump Organization's appraiser for purposes of this proceeding, right?

I believe so.

MR. KISE: Objection. Leading.

MR. MER: I'm summarizing the testimony he's already given, Your Honor. Just because I want to point out that the fact that Mr. Fields was retained is already in evidence. I don't need this letter to establish that. I only want this letter for the date.

Q So my question is just to confirm that you've already testified that Mr. Fields was the appraiser who the Trump Organization hired to handle this appraisal proceeding, right?

Yes.

Q nd he was hired based on this letter that is now in evidence on January 18, 2021, correct?

MR. KISE: Objection; leading and foundation. If he's asking if that's what the letter says, he can say that. He doesn't need this witness to confirm or deny it because this witness doesn't know. He knows what's written there and we just introduced it for purpose of notice.

THE COURT: Can you rephrase it just to ask him whether it says that which we've been doing most of this trial?

Q What is the date of the letter, Mr. Flores?

The letter is dated January 18, 2021.

THE COURT: nd do you have any reason to think that that date is somehow bogus?

THE WITNESS: I have no reason to believe that date is bogus.

MR. MER: I'm just going to ask that we put up the demonstrative PDX-2 and it is just a shorthand for telling us when each statement was issued and I'll note for the record that the 2020 statement was issued on January 11, 2021 which is one week before the appraiser was retained.

Q Mr. Flores, given that the rent nearly doubled when it was reset, do you recall if there was at least a sense among you and the others preparing the 2020 Statement of Financial Condition that the Nike rent reset would result in a higher rent?

MR. KISE: Objection. t least a sense? I'm not sure --

THE COURT: Sorry. Say it again.

MR. KISE: t least a sense?

MR. MER: What's wrong with that?

THE COURT: I'll allow it. It is a little vague, but I'll allow it.

Can you repeat the question, please?

MR. MER: Can I have a readback, please.

THE COURT: Please, read back.

(Whereupon, the requested portion of the record was read back.)

No, I don't recall.

Q So is it your recollection that when the agreement between the appraisers came up with a rent that was almost double the prior rent, that that was -- came as a surprise to the people who were working with you on the 2020 Statement of Financial Condition?

I don't recall.

Q Can you think of any reason why the Trump Organization could not have retained an appraiser earlier while the valuation for Niketown was still being prepared for the 2020 statement to obtain a preliminary value for the building to determine the likely change in the rent through the reset?

MR. KISE: Objection; calls for speculation.

THE COURT: I don't think it does. Overruled.

I don't know.

Q Well, my question was whether you can think of any reason. So is your answer, no, I cannot think of any reason?

No, I can't think of any reason.

Q Thank you.

Let's turn to the property in Vegas which is a joint venture with Mr. Ruffin. re you familiar with that property?

Yes.

MR. MER: Let's put up the 2014 Jeff supporting

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data. It is Exhibit 719. Let's go to row 751.
Q You'll see in row 751 for 2013 and 2014, it says, "Based on the cash flow from unit sales prepared by Ray Flores October 2013."
Did you do a cash flow analysis for Vegas in October of 2013?
Yeah, I recall putting together -- maintaining a cash flow.
Q So this one, you remember?
Yes.
MR. MER: Can we put up Exhibit 1139.
Q The top e-mail is from you to Eric Trump in July of 2013 and it references the subject Vegas and includes an attachment "Trump Ruffin five-year pro forma budget V17." Do you see that?
Yes.
Q nd it has a slip sheet for the attachment as the second page?
MR. MER: Your Honor, I move to admit both the e-mail and the attachment.
MR. KISE: Objection. Statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Documents were marked in evidence as Plaintiff's Exhibit 1139.)
Q So your e-mail to Eric Trump says, "Please see the

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attached"-- "Please see attached the updated model which incorporates llen's waterfall figures into the executive summary tab."
Just to be clear, is llen a reference to llen Weisselberg?
Yes.
Q nd is what's referenced here when it says, "the updated model" your cash flow analysis?
I believe so.
Q nd was this something you prepared at Eric Trump's direction?
Yes.
Q nd in the bottom e-mail, which is from Eric Trump to you, he refers to it as the Vegas model. Is that your cash flow analysis as well?
Yes.
Q nd the attachment which says, "V17," does that refer to version 17?
Yes.
Q For how long had you been preparing this model that is being updated in 2013?
I don't recall when I started preparing it, the model.
Q It would have been before July of 2013, though; is that right?
Yes.

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Q Did you continue to work on this Vegas model providing a cash flow analysis through the entire course of your employment at the Trump Organization until March of 2022?
I can't recall at what point I stopped maintaining the cash flow model, but from what I recall, I don't recall updating it regularly towards the end of my tenure at the company.
Q What, to your recollection, was the last updated model that you worked on?
I don't know.
MR. MER: Let's go ahead and mark Plaintiff's Exhibit 3210.
Q You will see, Mr. Flores, the bottom e-mail is from llen Weisselberg to you asking you to forward to him the analysis that you prepared for Eric and then you go ahead in the top e-mail and forward it on the Las Vegas model, right?
That's what the e-mail says.
MR. MER: I move to admit this exhibit, Your Honor.
MR. KISE: Objection. Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3210.)
Q nd the attachment says version, "V18." So is that a later version of what we were just discussing?
It's a different version. I'm not sure if it is a

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later version.
Q You're not sure if version 18 is a later version from version 17?
What are the date stamps to the title?
MR. MER: I'll just take that it is a different version. I think that's fine.
THE COURT: Okay.
MR. MER: nd let's look at the 2016 Jeff supporting data which is Exhibit 742 in evidence, row 816.
Q Now, we looked at the supporting data spreadsheet that had the 2013 and 2014 values for Vegas, both attributed to your cash flow analysis. nd now we're looking at the spreadsheet that has 2015 and 2016 and it is the same attribution, correct? It is based on your cash flow from unit sales that you prepared, right?
That's what this document says.
THE COURT: Mr. mer, how much longer because we have various scheduling issues to address?
MR. MER: I think I will probably be another 45 minutes.
THE COURT: We will have to bring him back Monday, I guess. Ten o'clock Monday. Counselors, right?
MR. KISE: That's fine.
THE COURT: Right. Well, five-minute warning. Take it back.

Witness, you're excused for the day. I direct you not to discuss this case or your testimony in it or anything about this case until after your testimony is through which will be probably, we hope, Monday and we will see you at ten o'clock on Monday. You're excused for now.

(Witness excused.)

MS. GREENFIELD: Counselor, why don't you -- all the schedulers, come on up.

Off the record.

(Whereupon the trial was adjourned to October 23, 2023.)

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In The Matter Of:

NYS ttorney General v.
Donald Trump, et al.

William Kelly, Michael Cohen
October 24, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 37
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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

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 ORG 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
October 24, 2023

B E F O R E:

HONORABLE ARTHUR F. ENGORON,
Justice, Supreme Court

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THE COURT OFFICER: All rise. Part 37 is now in session. The Honorable Judge Arthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: I think we are going to have some photographers come in first.

(Whereupon, there is a pause in the proceedings.)

THE COURT: Plaintiff, would you like to call your first witness for today?

MR. KISE: Your Honor, I'd like to just, as I mentioned over the weekend, place something on the record briefly before the witnesses enter the room.

THE COURT: Go ahead.

MR. KISE: So I just want to place our objection on the record to proceeding today under the circumstances.

As we had exchanged, the Attorney General knew about this COVID risk of -- at least as of last Wednesday. There was no mention of it, there was no notice of it. We had a shared podium, a shared microphone. There are court reporters here, court officers here, the Court, Counsel. We had multiple close sidebar discussions with now-COVID positive lawyers.

There was a deposition Thursday of the witness and

Counsel, the reporter were all exposed. There was no opportunity for any precautions of any kind. You'll notice I'm sitting over on this side of the courtroom.

Saturday evening was the first notice of this and a total of four team members from the Attorney General's team tested positive. None of the communications expressed any concern about safety or health, none of them asked for any protocol measures, none of them asked for anything to be done. The only reason for the notification was scheduling and the Attorney General simply wanted to proceed with the trial as if nothing had happened. And, respectfully, in our view, that's just beyond irresponsible.

There are many people in this courtroom, including myself, that have specific and special health concerns and considerations. Some have caretaking responsibilities. We don't know about all of the many dedicated court officers and court staff and court reporters in addition to the literally hundreds of media individuals present, and these individuals, including myself, are entitled to notice at a minimum so they can take necessary precautions.

Now, the Attorney General has made numerous public statements, numerous public statements about COVID.

Quote, "The health and safety of all New Yorkers has always been our top priority and in order to protect our communities we must continue to act responsibly and

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carefully." That's a quote from December of 2021.
So this is the same ttorney General also that sued mazon, among others, over their COVID practices. Yet her own staff ignore basic notice requirement. It seems as with everything else with this case that nothing else matters except for suing President Trump. We're just going to dispense with all the rules, we're going to dispense with all the protocols and we're going to forge ahead with the trial. Everyone is just looking the other way and, frankly, it's irresponsible to proceed.
Having at least another day -- there was another team member from the ttorney General that tested positive this morning. We're not exactly sure we're through with this. I hope for all our sake, but there is no prejudice to wait another day. There is no jury. Forging ahead with a key witness who now I understand also has potential considerations, I'm not sure what those are, but I certainly won't get into them on the record, having a break to ensure that all Counsel, all staff, everyone involved is cleared. I do appreciate that the ttorney General, as we did, tested themselves this morning, their counsel team and our counsel team and your counsel team, at least we understand from them tested negative, but it's really hypocritical to say the health and safety of all New Yorkers is a top priority and the G wants to forge ahead with this. nd I'm sure that

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there will be reactions to this, but it's a fact.
We have the leading candidate for president of the United States in this courtroom today and exposing that risk -- if this were different, if this were us doing this, I know where I'd be. I'd be in shackles. If I had not notified the Court of some risk, the ttorney General would be up in arms, their team would be up in arms and I think that's an unfair double standard I think that's applied to a lot of things procedurally in this case. I'm not talking about Your Honor's rulings.
THE COURT REPORTER: Counsel, please slow down.
MR. KISE: Sorry.
The Commercial Division and the assignments, but none of the rules seem to apply when we're chasing President Trump and I think it's unfair and I don't think we really should be here today exposing everyone to as yet some -- whether it be limited or not we don't know -- known risk and another day or two days would not have made a significant difference.
I certainly hope we're not going to hear from the government's key witness that there are health considerations that would preclude that witness from testifying truthfully, honestly and recalling so that a month from now or two months from now as is his normal fashion, he says well, I know I said that in court when I

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was at trial in New York, but I was taking medications and I was on pain pills and I was doing this and doing that. So I think that that's yet another reason to postpone for the day. Thank you, Judge.
THE COURT: Well, I can take a vote of all the people out there whether they want to proceed today. I realize that's not the issue. I understand what you're saying. I understand your concerns. I won't address, but I will allow the ttorney General's Office to address, if you would like.
lso, masks are available, N-95 masks. Peter, is that --
MR. SORRENTO: They're on counsel table.
MR. KISE: I just want to say one other thing, but the individual that's going to respond, I object to him even being here in the courtroom as I put this weekend. I don't think he should be here.
MS. H BB : I agree.
THE COURT: The individual is going to respond. Do you want to respond?
MR. SOLOMON: I do, Your Honor.
THE COURT: Make sure you're are close to the microphone.
MR. SOLOMON: First off, we take exception to any claim that we were irresponsible in any way, shape or form.

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Second, I'm not going to relitigate with Mr. Kise the issues on procedural things that may have happened in the past. We're here today, we are following the CDC guidelines. The individual, me, who is in the courtroom today, isolated for five days, as required, has tested negative for the last three days, and is wearing a mask. Those are the guidelines. That's what is appropriate.
We advised the Court from what I understand the Court conferred with various administration personnel.
THE COURT: True.
MR. SOLOMON: nd directed that we appear today, period, full stop. That's all that's relevant.
THE COURT: Well, the administration basically left it up to me, but they made certain recommendations, which was go ahead, if possible, and we're going ahead.
MR. ROBERT: Your Honor, if I may. That's not the issue. The issue is that the ttorney General's Office knew on Wednesday and didn't tell any of us, so we were here with our personal health issues, our family health issues, the Court's issues. We were in chambers. We had members of our team who were in a small deposition room last week on Thursday while other members of the team were here trying the case and having conferences with the Court and with the ttorney General having knowledge that one of the key lawyers tested positive. They didn't tell us. Then

unfortunately, that one mushroomed into four as of Saturday night. gain, as Mr. Kise said, the only reason the Court was notified was a scheduling issue, not for a safety issue. We then took it upon ourselves to notify those people that were in the deposition on Thursday of what happened. They were very grateful that we had let them know so they could take the appropriate precautions. Then a member of our team gets it yesterday and then we find out this morning another member of the ttorney General's has it.

So as we stand here today, we are truly in an outbreak. So to proceed under these circumstances is not in the health and safety of everyone in this room, including the Court, the staff, the litigants, the attorneys and there is absolutely no reason whatsoever to proceed. It's a bench trial. There is no prejudice and even the fact that we're in such close proximity is something that is incredibly problematic to us and we see no reason that we need to proceed.

THE COURT: ny last few words from the G's side?

MR. SOLOMON: I think Your Honor understands the current state of affairs.

THE COURT: Masks are available. I'm going to proceed.

Plaintiff, would you like to call your first witness?

MR. FINKELSTEIN: The People call Bill Kelly.

THE COURT: I hope we can move through Mr. Kelly because we are other things on the agenda today.

MR. FINKELSTEIN: Understood.

MS. H BB : Your Honor, I'm sorry. There is one thing that I would just like to ask.

Do we have two microphones for those that are using the podium to examine witnesses? Because I would not like to use one that the G has used. That does not have any kind of protective covering. So with all due respect, I'm not using something that's been closely contaminated too. Thank you.

THE COURT: Can you just use the microphones that you have available there?

MS. H BB : If I'd like me to stand here and cross examine him, that's fine, but the exhibits are there. I mean, the witness is there. Do we have another microphone? I think that would be the easiest.

MR. SOLOMON: The microphone is something that the G's office provided. If they want to bring their own microphone and use their own microphone and their own tech setup, we have no objection to that.

THE COURT: Whatever you want do is fine with me.

MS. H BB : Thank you. We'll figure it out.

MR. KISE: Will we have time to do that, to replace

the technology and support that?

THE COURT: Correct me if I'm wrong, you can take one of your microphones and plug it in there?

MR. KISE: If we can do that. gain, you know I'm not the tech person.

nd for the record, remember, I wanted the table this way with a distance that's even further, but nonetheless, if we can do that, that's fine. Then on a break we can move a microphone over there.

THE COURT: ll right. Peter, ask Rob, whoever.

MR. SORRENTO: I'm on the phone with the IT now.

THE COURT: We're on it.

nd Chris, doesn't it look much better this way, two tables?

THE COURT OFFICER: Ready for the witness?

THE COURT: Ready for the witness.

THE COURT OFFICER: Witness entering.

THE COURT: This is a little bit like waiting for the pitcher to come in from the bull pen.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE COURT OFFICER: Please have a seat.

THE WITNESS: Thank you.

THE COURT OFFICER: Please state your name and either home or business address on the record.

THE WITNESS: My name is William Kelly. My business address is Mazars US LLP. 135 West 50th Street, New York, New York.

THE COURT: Counsel, please proceed.

DIRECT EX MIN TION

BY MR. FINKELSTEIN:

Q Good morning, Your Honor. lex Finkelstein on behalf of the People.

Good morning, Mr. Kelly.

Good morning.

Q You are here today to testify under subpoena; correct?

Correct.

Q Can you please tell us where you are currently employed?

I am the general counsel of Mazars US LLP, an accounting firm headquartered in New York.

Q Can you please describe for us your educational background after you graduated from high school?

I went to Binghamton University and graduated in 1997. fter that I went to St. John's University School of Law,

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graduating in 2000.
Q fter you graduated from law school, could you take us through your professional experience at a high level?
Sure. Well, first in law school I worked at the Grievance Committee for the Ninth Judicial District, which is a body that investigates and prosecutes attorney misconduct. I also was a summer associate at the law firm Wilson Elser and I interned for the Honorable Judge Joanna Seybert with the Eastern District of New York.
fter law school I became an associate attorney at the law firm Wilson Elser where I was a summer associate. Prior I worked there for a couple of years then became an associate at another law firm called Shaub hmuty and after that I was brought back to Wilson Elser in an of counsel position, then made partner there until I became the general counsel at Mazars US beginning in late 2017 but effective January 1, 2018.
Q So you became general counsel of Mazars US effective in January 2018?
I was hired in late 2017 and I overlapped with my predecessor who was retiring for a month or so and then as of January 1st I was the general counsel for Mazars US .
Q fter you became general counsel at Mazars did you have any involvement in the Mazars engagements for Donald J. Trump?
I wasn't part of the engagement team, but I was part of the communication team with the client and I handled the legal

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aspects of the various Trump-related legal matters that were happening throughout the engagements and with the firm.
Q Can you elaborate on what you mean by the last --
Sure. There were several investigations that were either ongoing when I got there or commenced when I got there. For example, the U.S. House of Representatives Oversight Committee had issued several subpoenas to Mazars that were then being contested by the Trump Organization and made its way through the courts.
In addition, the New York District ttorney's Office, that's for the county of New York District ttorney also issued subpoenas in connection with an investigation they were conducting, as well as the New York ttorney General and other entities as well.
Q So what was your involvement in the context of those things that you just described?
When any subpoena would come in to the firm or be served upon the firm or attorneys, I would lead the legal response to that and I would communicate with the Trump Organization, my counterpart there being their general counsel about what was happening and what subpoenas we received and how we were responding.
nd I was making sure we were , making sure we followed the legal requirements of the subpoena and our obligations as a good corporate citizen; two, making sure we

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honored all of our duties to our client due to confidentiality and make sure we followed the rules there; and three, I had to make sure that Mazars US was in the best position legally that it could be given all the situation of what's going on.
Q nd when you say "the general counsel of the Trump Organization," who was that that you were talking to?
lan Garten.
Q So you mentioned some involvement in legal aspects. Did that take any particular form?
Yes. I would coordinate with our outside counsel who would gather documents, both internally through my office and going directly to the custodians, and then they would secure those documents, produce them to the -- whatever agency, whatever investigatory body I was looking and I would coordinate with the Trump Organization to let them know and give them copies of whatever it was that they requested.
Q Did there come a time when you participated in an assessment of Mazars' relationship with the Trump Organization?
Every year an accounting firm does a client continuance assessment for their clients. It could be more often than every year if there is a triggering event that would cause an accounting firm to reevaluate the conditions of the engagement. I was involved in that process. I was involved in the -- assessing the legal situation and the risk management situation and I coordinated that with others in management of the Trump

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Organization. Then we would report to the -- I'm sorry.
I coordinated with others in management of Mazars and then we would report that to the executive board, whether or not and under what conditions we could continue as the accountants for the Trump Organization.
Q nd you were involved in that process since you became general counsel in 2018?
Yes, I was -- I was probably the -- I probably would call myself the leader of that process, but I reported to the CEO and the executive board.
Q So you mentioned Mazars having received subpoenas. Were you comfortable continuing with the engagement at that time despite receiving subpoenas?
Yes. We considered every subpoena that we received from any new investigatory body as a triggered event to cause us to do a client continuance analysis and simply receiving a subpoena doesn't necessarily require us or compel us or cause us to want to discontinue an engagement.
So when we received the congressional subpoena, the first one that I think that was in 2019, we did that process of client continuance analysis and we concluded we can continue and we reached similar conclusions as we received subpoenas from our agencies and additional subpoenas from the same agencies.
Q t some point did you participate in a determination to terminate the relationship with the Trump Organization?

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Yes, I did.
Q When was that?
It was in May 2001 -- I'm sorry. 2021. We received information and circumstances had changed such that we made the decision to discontinue the services and we notified the Trump Organization of that.
Q What information are you referring to?
We had been subpoenaed by the District ttorney's Office of the County of New York for -- in connection with an investigation to llen Weisselberg's activity.
llen Weisselberg was the former CFO of the Trump Organization. The D was investigating his personal compensation and others around him.
We had received subpoenas and had been interviewed by the District ttorney's Office and based on that information and what we had come to learn about llen Weisselberg we determined we could no longer provide services to the Trump Organization.
Q Why did you reach that determination?
llen Weisselberg was the CFO of the Trump Organization. He was our main contact at the Trump Organization for the providing -- for them providing us financial information. If his representations to us about the accuracy and truthfulness of the financial records that he's providing to us as the outside accountants is compromised, if we can no longer rely on him as CFO, then we can no longer perform our

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engagements.
The engagements we were preparing at the time were preparing tax returns for the corporate entities and Donald Trump individually, as well as doing the statements of financial condition. Both of those engagements require that we rely upon the representations of management, in this case, llen Weisselberg, the CFO. If we are no longer allowed or no longer reasonably allowed to rely on his management we can no longer do those engagements.
Q I'd like to show the witness for identification a document marked as PX 2992. Do you recognize this document?
I do.
Q What do you recognize it to be?
I recognize the cover of this document to be an e-mail that I sent to lan Garten and I recognize page two of the document to be a letter I wrote that was an attachment to that e-mail. The last two pages I do not recognize, but they seem to be printouts of whatever was -- they're blank, so.
Q But those pages have Mazars Bates numbers on the bottom?
They do, and I don't know if the e-mail was like the e-mail went onto the separate page, so it printed a blank sheet so.
MR. FINKELSTEIN: Your Honor, I move to admit PX 2992 into evidence.

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THE COURT: Granted. It's in.
nd I'll direct the witness if you're asked a yes-or-no question, please just answer yes or no without any commentary. If you can't answer yes or no, then we can discuss it.
THE WITNESS: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2992 in evidence.)
Q I'd like to direct your attention to page two. The letter reads: "Dear llen, as general counsel for Mazars US , I write to advise the Trump Organization and related entities, including Donald J. Trump, that Mazars US is resigning from all engagements with the Trump Organization and related entities."
Didn't Mazars, in fact, resign from all engagements with the Trump Organization?
Yes.
Q Did any engagements continue at this time, the time of the letter?
No.
Q Why?
Why did they -- I'm sorry. I don't understand the "why" part.
Q Sorry. This letter is dated May 18, 2021. Do you see that?

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Yes.
Q So my question was did Mazars, in fact, resign from all engagements with the Trump Organization in May of 2021?
Yes.
Q Did Mazars cooperate with the transition to new accountants?
Yes.
Q You can set that document aside.
MR. FINKELSTEIN: I would like to show the witness for identification a document marked as PX 2994.
Q Do you recognize this document?
I do.
Q What do you recognize it to be?
I recognize it to be an e-mail I sent to lan Garten at the Trump Organization and the accompanying letter.
MR. FINKELSTEIN: Your Honor, plaintiffs move to admit PX 2994 into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2994 in evidence.)
Q The letter reads:
"Dear lan, we write to advise that the statements of financial condition for Donald J. Trump for the years ending June 30, 2011 to June 30, 2020 should no longer be relied upon

and you should inform any recipient thereof who are currently relying upon one or more of those documents that those documents should not be relied upon. We have come to this conclusion based in part upon the filings made by the New York ttorney General on January 18, 2022, our own investigation and information received from internal and external sources.

While we have not concluded that the various financial statements as a whole contain material discrepancies, based upon the totality of the circumstances we believe our advice to you to no longer rely upon those financial statements is appropriate."

How did you reach the determination that the Statements of Financial Conditions for 2011 to 2020 should no longer be relied upon?

s I explained in the second paragraph of this letter, we were aware of and reviewed the January 18, 2022 filings by the ttorney General's Office and litigation involving the Trump Organization and in that filing they detailed extensive allegations and issues concerning various assets that were listed in the statements of financial condition.

They identified areas that they alleged to have been overstated or improperly reported or some other issue that causes to examine our information that we had in our files and with and through counsel we conducted an internal investigation regarding that -- those -- those services, those statements of

financial condition. We reviewed other external documents that we were able to get from public sources and as a result of all that and knowing that many of these representations were provided to us through llen Weisselberg, we thought it appropriate to advise the client that they should no longer rely upon these financial statements.

Transcript continues on the following page....

Q If we could go to page three. Make it at page four.
I'm at page four.
Q Do you see the signatures on this page?
I do.
Q Whose signatures are those?
I understand them to be llen Weisselberg on the left and Donald J. Trump Jr. on the right.
MR. KISE: Objection, Your Honor. Is he testifying he knows or is he testifying that that's what they appear to be?
THE COURT: That's a good question. Let's ask him.
Do you recognize the signatures absent the identifications?
THE WITNESS: No, I don't.
THE COURT: Okay.
MR. FINKELSTEIN: If we could go back to PX 2994.
THE COURT: I just have one other question. Would you recognize them if they were real?
THE WITNESS: No.
THE COURT: So you just don't know what the signatures look like?
THE WITNESS: No.
THE COURT: Thank you. Okay.
Q So you wrote in the letter, "We have not concluded that the various financial statements as a whole contain material

discrepancies."
Does that reflect an affirmative determination that there were no material discrepancies?
That reflects --
MR. KISE: Objection. It says what it says. I mean, I don't know how the witness can testify adverse -- exactly what the words are on the page. re you calling for an explanation of what it says there in plain English?
THE COURT: Did you write this letter?
THE WITNESS: I did.
THE COURT: Then I'll let you interpret it.
Overruled.
Can you read the question back, please?
MR. FINKELSTEIN: Can I have a readback?
THE COURT: Read back, please.
(Whereupon, the requested portion of the record was read back.)
THE COURT: Yes, no?
That reflects that we have not concluded one way or the other. We have reached no conclusion.
Q Did you undertake any audit or review procedures to determine whether there were material discrepancies?
No.
nd this has an explanation if I may, Your Honor.

THE COURT: Sure.
THE WITNESS: Thank you.
No. In order for an accounting firm to issue an opinion about the veracity of financial information, they must conduct a test services, certain level of services that require testing, confirmation other high-level things. Most common would be an audit or a review. We did no services that would allow us to render an opinion about the truthfulness or untruthfulness of any of the financial information. So we were advising the Trump Organization through this that we have not reached any conclusion.
Q So did Mazars make any determination one way or the other that there were, in fact, material discrepancies?
No.
Q So going to the next paragraph, you wrote, " s we have stated in the Statements of Financial Condition, Mazars performed its work in accordance with professional standards. subsequent review of those work papers confirms this."
How did you reach that conclusion?
Well, the first sentence, I'm reflecting what the actual compilation report state when they were written in 2011, '12, all the way through '21. The second sentence, the "a subsequent review of those work papers confirms this," we went back and looked at our work papers again to make sure that we didn't make a mistake prior and we didn't. So that's what we

did to confirm the statements in those two sentences.
Q nd in reviewing the work papers, did you consider any professional standards in your analysis?
In conducting --
MR. KISE: Objection, Your Honor. I don't know if it has been established, foundation. Did this witness testify that he, in fact, reviewed the work papers and undertook the review of the work papers? He's not an accountant and as I understand from his deposition, he is not here as a corporate representative. He is here in his individual capacity or general counsel. I don't know if the requisite foundation has been made. I'm not saying they can't. I'm just saying it hasn't been laid yet.
THE COURT: Well, I thought your -- originally, I thought your objection was we don't know whether he did it or someone else at Mazars did it.
MR. KISE: Well, right. So if he performed it, then he could testify about what he actually did; but if not, then he has no foundation. But either way, it is not clear in the record.
THE COURT: ll right. Let's make the record clear.
Can you rephrase the question?
MR. FINKELSTEIN: Okay.
Q Earlier you mentioned a review of the work papers. Did

you undertake that review?
THE COURT: You personally, you mean?
Q You personally.
I was part of the legal team with external lawyers that did that review.
Q nd what did that review determine?
MR. KISE: gain, Your Honor, same objection. Is he asking for what he was told because the witness has just testified he was part a legal team? He is not an accountant, so he wouldn't have any understanding of any professional standards. So if he's being asked to convey what he was told in his role, then that may come in depending on what the answer is, but there's still no foundation and I would think that what he was told is hearsay. They would need the witness on to come in and testify to it.
THE COURT: If the witness is just saying what he was told, I would agree it's hearsay.
MR. SOLOMON: Your Honor, that wasn't the question. The question was what did he say. He wasn't asked what he was told.
THE COURT: Maybe we have to dig deeper into how he learned what he learned. So I'll ask, the question, just be very clear as to whether we're talking about him or the organization as a whole.

Q So what was your understanding of results -- of the results of the review referenced in this letter?
My understanding was that a review of those work papers confirms that the Statements of Financial Condition and the work performed by Mazars, the work performed by Mazars performed in accordance with professional standards as I wrote in this letter.
MR. KISE: Same objection, Your Honor. If that understanding is based on hearsay, then it is inadmissible.
THE COURT: I'm not sure -- I feel like we're going around in circles unfortunately. Was this -- was this a team conclusion? Is that basically what you're saying?
THE WITNESS: It was a joint conclusion when I and the legal team -- the external legal team reviewed the work papers and we reached a conclusion based on our joint review. I did physically look at work papers. I can't say that I physically did every single one for every single year, but I was part of that team. They worked at my direction and reported to me.
THE COURT: Do you feel that you needed to be an accountant to make these statements?
THE WITNESS: I believe someone needs to be trained in this area and I've been representing accountants for 25, 24 years and I've been -- I'm very familiar with the

standards and how to determine whether or not an engagement comports with professional standards. So yes, I feel comfortable that I don't need to be an accountant to understand that. I don't think that's a general person's ability.

THE COURT: Okay. I'll let it all in. Objection overruled and, of course, you can cross-examine him on this issue. Let's move ahead.

Q Is it consistent that the statements should no longer be relied upon and that Mazars performed its work in accordance with professional standards?

Yes.

Q Can you elaborate on that?

When performing a service like this, a compilation or Statements of Financial Condition, we rely on the representations of management. nd in doing so, we take the information and do our work.

MR. KISE: Objection, Your Honor. gain, this witness has no foundation here. He's not an accountant. He didn't engage in the actual performance of the work and he is not here as a corporate representative, which I think is a significant distinction. He's the general counsel of the company. He came along after the fact and now he's offering into evidence explanations about matters that he had no personal involvement in whatsoever.

THE COURT: I don't think he's testified he hasn't had any personal involvement in it so --

MR. KISE: Your Honor, his personal involvement was limited to after the fact looking over things, but he didn't engage in the -- he's providing the Court now with a narrative of what actually took place as opposed to what he learned from his review.

THE COURT: What's wrong with a narrative of what took place?

MR. KISE: Because he wasn't there, because he wasn't there. It's -- there's no foundation for it. He's not an accountant.

THE COURT: Well, that's two different things. I'm going -- he said he was involved.

Were you strongly involved, weakly involved? Were you a part of the team that issued this statement and you would understand what it was meant?

THE WITNESS: I was part of the -- I was the one who wrote this letter and I directed the team that did this subsequent review, but I was not part of the original services that were rendered.

I'm not part of the engagement team. This is an after-the-fact examination.

THE COURT: We understand that. Objection overruled. Go ahead. t least I understand that.

Q Mr. Kelly, were you in the middle of an answer before this objection?

Yes.

MR. FINKELSTEIN: Can I have the question read back, Your Honor?

THE COURT: Just the question or do you want the partial answer also?

MR. FINKELSTEIN: The partial answer as well.

THE COURT: Okay.

Read back, please, the last question and the partial answer.

(Whereupon, the requested portion of the record was read back.)

THE COURT: Was that a completed answer or do you need to add anything to that?

THE WITNESS: That is not a completed answer. I wanted to continue and explain.

THE COURT: Please do.

THE WITNESS: Thank you.

So after we rely on the information provided by the client, if it subsequently comes out years later that the representation was misstated, the work we did at the time is still performed in accordance with professional services. That just means that we know now of subsequent information that would cause us to advise the clients that maybe they

should not rely on the financial statements. It doesn't mean that we did the work seven years ago wrong.

Q So going to the next paragraph, it reads, "Due in part to our decision regarding the statements as well as the totality of the circumstances, we have also reached the point such that there is a non-waivable conflict of interest with the Trump Organization. s a result, we are not able to provide any new work product to the Trump Organization."

What was the non-waivable conflict of interest referred to here?

We came to the conclusion that we would -- members of our firm, members of Mazars would be called upon to testify in an adverse position to our client the Trump Organization. nd as a result, we couldn't continue with providing services that were based on us being able to rely upon those representations and/or any representations and advocate for those when filing, in this particular case, tax returns.

Q fter this letter was sent, did you have any further discussion of the letter with the Trump Organization?

Yes.

Q Who did you discuss the letter with?

t first, I had a conversation with lan Garten and after that, I believe I had one, maybe two conversations with lan and Eric Trump.

Q What do you recall about those discussions?

I recall at the first conversation with lan was him calling me up and trying to understand the letter and what it meant and get some -- get some more color to what I had written. nd then at the end of that call, he said, you know we're going to have to talk to Eric or somebody else about this. nd he set up another call with him and Eric Trump and I'm not sure if it was one or two calls, but it was within a day of each sorry, so that's why I'm not sure, and Eric Trump and lan expressed their opinions of the letter and asked for explanations and I responded.

Q Have you ever met with or directly communicated with Donald J. Trump?

No.

MR. FINKELSTEIN: No further questions at this time.

THE COURT: Okay. Thank you.

Will there be any cross-examination at this time?

MR. KISE: Can we drag one of these mics? I don't know how this works.

THE COURT: We have a portable one.

MR. SOLOMON: Your Honor, I may have misstated something earlier. The microphone is actually the court's and not the G's.

THE COURT: Thank you. We lose a lot of things that way.

MR. ROBERT: Since it is a court mic, is there another one we can get?

IT SPECI LIST: Those are the only two we have.

MR. ROBERT: Is there a way to pair it up with something later, so we don't have to use the same remote?

IT SPECI LIST: We would have to get another receiver.

MR. ROBERT: Maybe during the lunch break?

IT SPECI LIST: Not during the lunch break.

MR. KISE: Do we have like maybe wipes or something to use on the microphone, like something basic --

MS. H BB : Do you have another -- mics usually come with extra head covers. Do you have a new one?

IT SPECI LIST: I'll see what we have available.

MS. H BB : That would be great. Thank you.

THE COURT: Chris, typical of you to suggest a low-tech solution, right.

CROSS-EX MIN TION

BY MR. SU REZ:

Q Mr. Kelly, it is nice to see you again.

Nice to see you.

Q I hope you are feeling well since our last meeting last week at your deposition.

I am.

Q Mr. Kelly, you're the general counsel of Mazars US ,

correct?

Correct.

Q Prior to joining Mazars, you represented accountants in accounting firms in private practice, correct?

Correct.

Q For over 20 years, correct?

Correct. Not since prior to joining Mazars because I joined in 2018 and graduated in 2020. So for 18 years, I represented accountants give or take.

Q For 18 years, you represented accountants?

Yes.

THE COURT: Please no talking over each other.

Q You represented accountants in connection with their professional lives, correct?

Correct.

Q nd partnership disputes, correct?

Correct.

Q You advised the accountants on how to comply with professional rules and ethics, correct?

Correct.

Q nd in fact, you advised accountants how to handle what you described at your deposition last week as particularly tricky situations, correct?

Correct.

Q nd you lecture on risk management for accountants,

correct?

I used to in private practice, correct.

Q Mazars was a client of yours for a long time before you became its general counsel, correct?

Correct.

Q nd the law firm of Wilson Elser continues to represent Mazars to this day, correct?

Correct.

Q In fact, Wilson Elser was the firm that you used to conduct an internal investigation into Mazars' work on the president's Statement of Financial Condition, correct?

One of two firms.

Q One of two firms. The other one was the Blank Rome firm, correct?

Correct.

Q Those were Mazars' outside counsel in connection with the internal investigation that you conducted?

Correct.

Q You're not a CP , however, correct?

I am not.

Q You do not prepare compilation reports, correct?

Correct.

Q You do not prepare asset valuations, correct?

Correct.

Q nd you're here today in your individual capacity,

correct?
Correct.
Q Because Mazars made the determination that you were the person most knowledgeable --
MR. SU REZ: Judge, the feedback on this is pretty bad.
THE COURT: Where is Rob when you need him? Try to get Rob, please.
Why don't we continue, maybe just tone it down a little bit.
Q Because Mazars made the determination that you were the person most knowledgeable about certain topics that the New York ttorney General wanted to discuss today, correct?
Correct.
Q nd that topic included compilation procedures, correct?
Well, I don't know what the ttorney General wanted to talk about, but when I was asked who was the most knowledgeable about certain topics, it was me.
Q Not Donald Bender?
Not on the topics that we were asked about.
Q You were asked by the NY G to testify at trial in this case at the end of last summer, right?
I'm not sure when it was. It was several months ago.
Q Several months ago, you were asked to testify at trial

today?
I was advised that I may be called to testify, that -- at this trial.
Q nd when were you subpoenaed?
I don't -- I don't know.
Q Have you ever seen a subpoena?
I believe I have.
Q When did you see that subpoena?
Months, a month ago, two months ago. I have no specific recollection.
Q Two months ago, you were subpoenaed to testify at trial?
It could be. I have no specific recollection.
Q nd in the months since, you met with the ttorney General's office at least twice to prepare for your testimony?
Correct.
Q nd in fact, you practiced your direct examination with the government, correct?
I wouldn't say it was a practice. They asked me some questions and I gave them the answers.
Q In preparation to testify at trial today?
In anticipation of the testimony, yeah.
Q nd you were deposed at Trump Tower last week, correct?
Correct.
Q nd we sat in a small conference room with members of

the ttorney General's team, correct?
Correct.
Q Have you or your lawyers further discussed your testimony today with the NY G?
Yes.
Q Since the deposition?
Yes.
Q What did you discuss?
I was informed over the weekend that the attorney who was questioning me had come down with COVID and a new attorney was going to meet me and get familiar with my talking style. nd when we met on Monday by Zoom, we did the same thing we did previously with that attorney, about asking questions and me giving answers.
Q You practiced for your direct examination, correct?
MR. SOLOMON: Objection. The witness already testified he wasn't practicing, Your Honor.
THE COURT: He did. So you'll have to use a different word.
Q What would you call reviewing your questions for trial today other than practicing?
Well, for me, it wasn't a practice. He wanted to get to know my rhythm, my answering style, how I answered questions, so maybe it was practice for him; but for me, it was just answering questions.

Q They wanted to rehearse your direct examination for today?
Whatever their intentions were, I don't know.
Q Because the lawyer that sat with us in a conference room for five hours on Thursday had come down with COVID correct?
Correct.
Q That's what they told you?
Yes.
Q nything else that you discussed at that meeting on Monday?
No.
Q You reviewed Donald Bender's work on the Statements of Financial Condition, correct?
Correct.
Q nd in fact, you reviewed Mazars' work papers on the Statement of Financial Condition, correct?
Correct.
Q You determined that Mazars' work was conducted in accordance with professional standards, correct?
Correct.
Q In fact, you described Mr. Bender's role in working for the Trump Organization as unique and irreplaceable correct?
I have described him that way, yes.
Q nd in fact, Mr. Bender was the engagement partner on

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the Trump engagements for a period of time that you reviewed, correct?
Correct.
Q nd you said that he had 30-plus years of knowledge of the Trump Organization and their financial reporting, correct?
Correct.
Q You told me when we met at your deposition that he was familiar with everything that was provided to him, correct?
I don't remember those exact words, but I will agree to those words today.
Q Okay. Mr. Bender became familiar with everything that was provided to him, correct?
Correct, in a general sense.
Q Those were your words at your deposition, correct?
I don't remember those words in particular, but...
Q You also told me that Bender knew the ins and outs of all the transactions, correct?
Correct.
Q The historic information, correct?
Correct.
Q What entities were no longer in operation, correct?
Correct.
Q That there were a lot of similarly-named entities and he knew all of them with great recall? Those were your words, correct?

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Correct.
Q In fact, you told me just last week that Mr. Bender would give a four-hour answer if I asked him what knowledge he had of the Trump Organization, correct?
Correct.
Q nd you also told me that you had no concern with the work that Donald Bender did for the Trump Organization, correct?
Correct.
Q nd that Mazars had no concern with the work that Donald Bender did for the Trump Organization, correct?
Correct.
Q re you concerned that Mr. Bender received appraisals that he claimed he did not read and understand?
I'm familiar with what you're talking about and I'm not concerned about that.
Q Because you were sitting at his deposition, correct?
Correct.
Q nd that didn't concern you?
No.
Q re you concerned that Mr. Bender did not read everything that was sent to him by the Trump Organization?
No.
Q re you concerned that Mr. Bender was provided with loan documents that he claims he did not read?
No.

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Q re you concerned that Mr. Bender claimed not to have expertise in interpreting SC 274?
No.
Q re you aware that SC 274 governs the preparation of an individual's Statement of Financial Condition?
In a general sense, yes.
Q re you concerned that Mr. Bender did not read or comprehend the supporting data for the Statements of Financial Condition in their entirety each year that they were provided to him?
I don't accept the premise to that question.
Q Why not?
I'm not sure it's a fact that he did not do what you said he didn't do.
MR. SU REZ: ll right. Let's pull up Mr. Bender's trial testimony at page 331 at lines 12 through 19:
"You can't answer whether you read the whole document. Yes. Okay. The Statement of Financial Condition of the President of the United States and you can't answer if you read the whole document, is that right. I can't answer today that I read every line."
Do you see that?
I do.
MR. SOLOMON: Your Honor, I'm going to object to this. The original question was the supporting data. This

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answer speaks to the Statement of Financial Condition. Which is it?
MR. SU REZ: nd then --
MR. SOLOMON: To show this witness testimony from another witness on a different document is unfair and misleading.
MR. KISE: You mean like they do just about with every witness and I object and it is overruled?
MR. SOLOMON: Mr. Kise, that is totally unnecessary and you know it.
MR. KISE: It is not unnecessary.
MR. SOLOMON: There is an objection to the bench which does not concern you.
MR. KISE: Everything that goes on here concerns me and my client, absolutely, sir, including your health.
MR. SOLOMON: Well, thank you for your concern.
THE COURT: I think there was a misrepresentation of what was testified to in the question, but rather than unpack all this, why don't we just move ahead.
This is not your testimony, right?
THE WITNESS: The testimony on -- the testimony on the screen is not my testimony.
THE COURT: Right. Right. Let's have the next question and I'll deem everything else withdrawn.
Q Would it concern you that Mr. Bender testified in court

that he could not answer --
THE COURT: Wait. Wait. That wasn't in court, right?
MR. SU REZ: This was in court.
THE COURT: Oh, I'm sorry this was actually -- I haven't caught up in modern technology. Yes, this was in court. pologize.
Q Would it concern you that Mr. Bender testified in court that the Statement of Financial Condition of the President of the United States and he couldn't answer if he read the whole document?
Well, he said he couldn't answer that day whether he read every line and I understand that to mean that he couldn't recall reading every line of every document as he was sitting on the witness stand. So that doesn't concern me that.
Q It does not concern you. nd you can't answer whether he read the whole document. He says yes, he could not answer if he had read the whole document.
THE COURT: What's the question?
Q Does that concern you?
Knowing how the next question played out, I understand what he's trying to say.
MR. SU REZ: If you read up to the prior line, can we scroll in on that.
Q Did you read this document? He responds, "Did I read

the whole document. I presumably -- I can't answer if I read the whole document."
THE COURT: What's the question?
Q re you concerned that Mr. Bender didn't read Statements of Financial Condition in their entirety?
That's not what he said. He says, "I presumably -- I can't answer if I read the whole document."
Q Okay.
nd he goes on to explain that he can't answer today that he read every line of every document and whatever the document that is. I still don't know what document it is.
MR. SU REZ: Let turn to page 375 of the trial testimony at lines 24. We are looking at PX 731. Can we pull up 731 and put it next to this document just to make sure that we are clear.
(Continued on the next page.)

Q Can we scroll to the top of PX 731? Do you recognize this document?
I recognize this type of document. This one in particular I have no memory of.
Q Okay. Do you see what "PBC" means?
Yes.
Q PBC means prepared by client?
Correct.
Q nd that's a document that Mazars stamps on documents that it receives?
That's a stamp Mazars puts on documents that it receives.
Q nd see where it says there "Donald J. Trump Statement of Financial Condition as of June 30, 2015?"
I do.
Q Do you understand this to be the supporting data for the Statement of Financial Condition for 2015?
I believe that's part of it, yes.
Q In connection with the internal investigation that you led, I presume you reviewed the supporting data for the statements of financial condition?
I did.
Q Okay. nd do you see where I ask Mr. Bender here at trial: "Mr. Bender, in connection with the Statement of Financial Condition is this something that you saw?" We pulled

up PX 731, we see that on the line before.
"The schedule."
He says, "I see?"
"Did you see it?"
" NSWER: Yes, I did.
"QUESTION: Did you review it?
" NSWER: I did not review it.
"QUESTION: Did not review it?
"Review is the job was a compilation."
" NSWER: Okay."
Did you read it?
May not have read every line, but I did look at it.
Q re you concerned that Mr. Bender did not read every line of the supporting data of the Statement of Financial Condition?
No, I'm not.
Q Okay. That does not concern you at all?
No.
Q Okay. Mr. Bender was the engagement partner that signed the compilation reports; correct?
Correct.
Q nd his work was subject to quality review by another member of the team; correct?
Correct.
Q re you concerned that Mr. Bender testified that just

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because something was sent to him it didn't mean that he reviewed it?
No.
Q Okay. nd that includes the years where Mr. Bender was compiling the Statement of Financial Condition for the president of the United States?
I don't know what it refers to.
Q You understand that Donald J. Trump was the president of the United States; correct?
Correct.
Q That's not lost on you; correct?
Correct.
Q Okay. You testified earlier today that Mazars performs compilation engagements in connection or rather in compliance of professional standards; correct?
Correct.
Q nd this includes professional standards promulgated by the merican Institute of Certified Public ccountants; correct?
Correct.
Q nd you're familiar with R 80?
In a general sense.
Q nd RC 80?
I believe so again in a general sense.
Q Okay. nd those are accounting standards that govern the preparation of compilations?

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In a general sense.
Q Okay. Mazars doesn't have its own manual for compilation engagements; correct?
Correct.
Q It follows the policies and procedures concerning compilation work that are promulgated by the IBC ; correct?
Correct.
Q nd, in fact, each compilation report is subject to quality control review before its issue; correct?
Correct.
Q nd at your deposition we talked about the fact that compilations have limited uses; right?
Correct.
Q nd you describe compilations as something that you personally have an issue with?
On a personal level, yes.
Q That's not the official Mazars policy; correct?
No.
Q Compilations are the lowest level of financial statement preparation; correct?
Correct.
Q nd I think you said you had a philosophical issue with the purpose of compilation in a general sense; correct?
Correct.
Q But you took no exception with how the Trump

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Organization used the compilation reports prepared by Mazars; correct?
Correct.
Q You would agree with me that Mazars had an obligation to read and understand the supporting data provided in connection with preparing the compilation of a Statement of Financial Condition?
Correct.
Q nd you would agree with me that Mazars has an obligation to understand the basis of valuation for each asset listed in the Statement of Financial Condition; right?
Correct.
Q nd confirm that the valuation method is consistent with the definition of estimated current value; correct?
Correct.
Q You would agree that Mazars has an obligation to confirm that the notes to a Statement of Financial Condition are consistent to the supporting data when preparing an accountant's compilation report; correct?
Correct.
MR. SU REZ: Let's take a look at Plaintiff's Exhibit 719 at line 654.
Q nd Mr. Kelly, this is the supporting data for the 2014 Statement of Financial Condition that was produced into evidence by the ttorney General. Do you see here that it provides a

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valuation of the Seven Springs property under development?
I see that.
Q nd do you see here that the basis of valuation is an anticipated selling price to reach an anticipated profit times the number of homes to yield an anticipated value. Do you see that?
I see what it says.
Q Okay. Do you see that the method of valuation reflects to the -- I'm sorry -- reflects the anticipated profit after cost?
I do.
Q nd do you see that the method used here does not account for the time value of money in reaching a value for the project under development?
I don't see any indication of that, correct.
Q Correct there is no indication here that the time value of money was taken into account; correct?
Correct.
Q nd this is something that you would have expected Mazars to read and understand in connection with the preparation of the compilation report; correct?
Correct.
Q Okay. Let's take a look at Plaintiff's Exhibit 730. This is a 2014 Statement of Financial Condition and the accompanying accountant's compilation report prepared by Mazars.

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Those were previously introduced into evidence by the ttorney General. Can you please take a look at page 6 of the document. It's page 6 of the PDF, page four of the -- on the footer.

Do you see where it says "Pursuant to G P, this financial statement does not reflect the value of Donald J. Trump's worldwide reputation; however, the brand value has afforded Mr. Trump the opportunity to participate in licensing deals around the globe as reflected on the balance sheet herein." Do you see that?

I do.

Q nd it goes on to say, "Mr. Trump's name conveys a high degree of quality and profitability;" correct?

Correct.

Q The prestige significantly enhances the value of the properties reflected in this financial statement, as well as that of his future projects; correct?

That's what it says.

Q Okay. "The brand along with the level of quality of Mr. Trump's residential developments has allowed the selling price per square foot in Trump properties to be amongst the highest among prominent real estate developers."

Do you see that?

I see that.

Q nd do you see where it concludes, "the goodwill attached to the Trump name has significant financial value that

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has not been reflected in the preparation of this financial statement." Do you see that?

I see that.

Q nd would you have expected Mazars to read and understand this note to the financial statement before issuing its compilation report; correct?

Correct.

Q ll right. Now, let's turn to the Supporting Data for this year, PX 719. This is Plaintiff's Exhibit 719 and if we can start at the top, 679. This, again, is the 2014 Supporting Data. Do you see that?

I see that.

Q The brand premium -- if we look at Colts Neck, the Colts Neck property, line 306 of this property, would you agree with me that the valuation method disclosed there includes the value of the fixed assets; correct?

I see that.

Q nd the "premium for fully operational branded facility at 30 percent." Do you see that?

I see that.

Q Would you have expected Mazars to read and understand the basis for valuing the Trump National Golf Club at Colts Neck?

Yes.

Q nd you see there next to the value of 61,257,000,

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which is the sum of the value of the fixed assets plus the fully operational branded facility premium of $61 million that has the Mazars check numbers on it.

I see that.

Q Correct.

nd if we go to line 325, this is the Washington, D.C. course, you again see the value of fixed assets at 46,270,000 plus a premium for a fully operational branded facility at 30 percent; correct?

I see that.

Q nd you again see the Mazars check numbers?

I see those.

Q nd you would have expected Mazars to read and understand the basis for valuing the Washington, D.C. club?

I would.

Q nd if we go on to line 347, we again see the Trump National Golf Course in Philadelphia and as Justice Engoron has taught me to do, if I were to ask you the same questions about the golf club in Philadelphia as I did with the golf club in Washington, D.C. and the golf club in Colts Neck, you would answer the same way?

Yes.

Q nd if we can continue scrolling through the following properties. You would see the same is true of Hudson Valley; correct?

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Yes.

Q nd you would see the same is true as the golf club in L. .?

Correct.

Q nd you would see the same is true for the golf club in Charlotte; correct?

Correct.

Q nd the golf club in Jupiter?

Correct.

Q nd in all of these instances would you have expected Mazars to read and understand the basis for valuing these golf clubs; correct?

Correct.

Q Now, let's look at Plaintiff's Exhibit 755. This is the Statement of Financial Condition for 2017 for President Trump with the Mazars compilation report included; correct?

Correct.

Q If we take a look at the assets page. Do you see where it says "other assets" of $318 million?

I do.

Q Now, let's turn to page 21. nd the "other assets" says "the estimated current values of other assets are based on an evaluation by the trustees in conjunction with their associates and outside professionals using various valuation methods." Do you see that?

I do.
Q Do you see with where it says "Trump Tower?"
I do.
Q Do you see where it says "Mr. Trump owns a triplex apartment on the top three floors of Trump Tower?"
I see that.
Q Now, take a look at the corresponding supporting data for this note, which we'll pull up as Plaintiff's Exhibit 758. This is the supporting data for the 2017 Statement of Financial Condition, and if we scroll down to line 969.
MR. SU REZ: Scroll up a little bit. Up. Up.
Q You would see here that the 2016 data reflected the townhouse triplex based on comps at 30,000 square feet for the prior year; correct?
I see what it says.
Q nd you see where it says that the triplex based on comps at 10,000 square feet for the current year is 116,800,000?
I see that.
Q Do you see that? nd you see the Mazars check number right there on it; right?
I see that.
Q nd you would have expected Mazars to read and understand this change; correct?
I would, yes.
Q nd you can agree with me that the square footage here

changes from 10,000 -- excuse me -- from 30,000 square feet to a bit over almost 11,000 square feet. Do you see that?
I see that.
Q Okay. nd you would agree with me that this was a correction that was made by the Trump Organization on the Supporting Data?
I don't know who made the correction.
Q It wasn't Mazars; correct?
Correct.
Q nd you would expect the notes to be conformed as appropriate; correct?
That's -- I don't understand that question.
Q You would expect the notes to accurately reflect the basis for valuation; correct?
Not necessarily. The notes don't need to describe the basis of valuation.
Q But you would expect the accountant, Mazars, in preparing the compilation to make sure that the notes were consistent with the supporting data; correct?
Correct. If the notes were consistent with the supporting data, yes.
Q nd sufficiently descriptive as appropriate?
s appropriate.
Q Correct.
nd it would have been to disclose to Mazars that there

was a change in the triplex; correct?
What would have been to what?
Q Disclosed here in the supporting data that there was a change in the size of the triplex; correct?
Correct. The supporting data reflects the change in the size.
Q nd Mazars never called back any of the prior years' Statements of Financial Statement compilation reports; correct?
Correct.
THE COURT: Hold on. This is when we usually break. How much longer do you think that this cross examination will take?
MR. SU REZ: I've got a little bit to go.
THE COURT: What's a little bit?
MR. SU REZ: Maybe an hour.
THE COURT: Maybe an hour, all right. Let's keep going for now.
Q nd if we looked at the fixed asset valuation method, let's take a look at lines 267, would you agree with me here that the valuation method disclosed to Mazars for assets included the value of the fixed assets for the Trump International Golf Club Florida?
I see that.
Q nd would you agree with me here that the Trump Golf Club Briarcliff Manor included the value of the fixed assets?

I see that.
Q nd if we can scroll down you can see that the fixed asset valuation method here for the Trump National Golf Club Bedminister also used the fixed asset value approach?
I do.
Q You see all of that?
nd if I were to ask you the same question about all of the other golf course properties you would agree with me that they all again disclose the fixed asset value method as the basis for valuation of each of these assets?
That's what it says.
Q That's what it says.
nd you would have expected Mazars to read and understand the Supporting Data; correct?
Correct.
Q Okay. Now, let's go back to Plaintiff's Exhibit 755 at page 5 of the PDF. nd here it says "assets are stated at their estimated current values and liabilities at their estimate current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by the new trustees of the Donald J. Trump Revocable Trust." Do you see that?
I see that.

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Q The fixed assets approach to valuation isn't specifically identified here; correct?
Correct.
Q nd you would have expected Mazars to read and understand this paragraph; correct?
Correct.
Q Okay. Turning to Plaintiff's Exhibit 2992. This was the letter that you sent to the Trump Organization; correct?
Correct.
Q nd earlier you testified that you sent this letter after Mazars learned of certain things that the District ttorney's Office was asking questions about; correct?
Correct.
Q Prior to sending this letter you never contacted the Trump Organization; correct?
I may have called lan Garten to let him know I was coming.
Q But you didn't ask the Trump Organization to provide information or any backup; correct?
Correct.
Q You never asked the Trump Organization to give you information concerning the questions that the District ttorney's Office was asking; correct?
Correct.
Q You took the District ttorney's Office at their word;

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correct?
Not quite.
Q But you never gave the Trump Organization an opportunity to comment on their allegations; correct?
Correct.
Q Your decision to terminate the engagement was because Mazars deemed Mr. Weisselberg not to be credible; correct?
Correct.
Q nd as a result you could no longer rely on his representations; right?
Correct.
Q Does Mazars take the position that when deciding to disengage the Trump Organization as a client it executed that decision in accordance with professional standards?
Correct.
Q Let's take a look at Plaintiff's Exhibit 2994. You wrote this letter; correct?
Correct.
Q nd it says that Mazars has not concluded that the various financial statements as a whole contain material discrepancies; correct?
Correct.
Q When you refer to the various financial statements you meant the statements of financial condition for President Trump for the period 2011 to 2020; correct?

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Correct.
Q nd prior to sending this letter Mazars conducted its own investigation; right?
Correct.
Q You looked at public sources; right?
Correct.
Q Those included newspapers?
Correct.
Q nd other publicly available documents; right?
Correct.
Q You didn't perform professional services before you issued this letter; right? You --
Did not perform professional accounting services prior to issuing this letter.
Q Mazars did not perform professional accounting services prior to issuing this letter?
Correct.
Q You didn't perform an audit of the Statement of Financial Condition?
Correct.
Q You didn't perform a review of the statements of financial condition?
Correct.
Q Prior to sending this letter you also considered information that you received from internal and external

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alternatively sources; correct?
Correct.
Q nd you reviewed Mazars work papers; correct?
Correct.
Q Including all of the previous work papers that we previously reviewed; correct?
Correct.
Q nd all of the statements of financial condition that we previously looked at?
Correct.
Q nd you concluded that Mazars' work was done in accordance with professional standards?
Correct.
Q nd you reviewed the allegations in certain filings that were made by the New York ttorney General; right?
Correct.
Q nd you understood as a lawyer at the time that those were just allegations; right?
Correct.
Q nd again, you never asked the Trump Organization for an opportunity to provide input on the NY G's allegations?
Correct.
Q You never interviewed anyone from the Trump Organization; right?
Correct.

Q You never asked the Trump Organization to walk you through the valuation methods that had been used in the statements of financial condition; correct?
Correct.
Q But you did look at the supporting data; right?
Yes.
Q nd you saw how it was reported in the notes; correct?
Correct.
Q nd you concluded that the work had been done in accordance with professional standards; right?
Correct.
THE COURT: That's been asked about five times already.
Q nd after conducting all of this diligence, which included two outside law firms; right?
Correct.
Q It included communications with the New York ttorney General's Office; correct?
Correct.
Q You spoke with these people; right?
I'm --
Q Or some of the ones that might be out by COVID; right?
Yes.
Q nd Mazars never determined that there were any material discrepancies with respect to the Statement of

Financial Condition that it prepared for President Trump from 2011 to 2018?
That is correct.
Q nd Mazars takes the position that its decision to advise its client not to rely on the statements of financial condition from 2011 to 2020 was executed in accordance with professional standards; correct?
Correct.
Q Mr. Kelly, you would agree with me that Mazars and its predecessors prepared compilations of the Statement of Financial Condition for decades?
I could only say until, like, 2005 and 4. I don't know before that.
Q really long time?
really long time.
Q nd Mazars never refused to prepare a Statement of Financial Condition prior to 2021; correct?
For this client, correct.
Q Correct, fair.
nd each year Mazars got paid to prepare the compilation report for the Statement of Financial Condition; correct?
Correct.
Q nd each year Mazars also got paid to prepare the president's federal income tax returns; correct?

Correct.
Q nd Mazars also prepared tax returns for dozens, if not hundreds, of other Trump Organization entities; correct?
Correct.
Q nd reviewed or audited financial statements for dozens of entities; correct?
I'm not sure about dozens, but yes, excess of ten.
Q In excess of ten.
Since 2011, there were at least 116 engagements for at least 14 entities in the audit review and attestation categories. Does that sound about right?
I'll assume that that does not disprove anything in my mind.
Q You don't have a basis to dispute that?
Right.
Q nd this work took place over a decade; right?
Correct.
Q nd Mazars was a Trump Organization primary outside accounting firm?
Correct.
Q nd Mazars was paid millions of dollars in fees; right?
Correct.
Q nd the Trump Organization was Mr. Bender's biggest client?
Correct.

Q By a lot?
Correct.
Q nd before the New York ttorney General started investigating in 2019, Mazars never had any issue with any of the work it did for the Trump Organization; correct?
Not correct.
Q Mazars didn't have any major issues that it did with it?
That's correct.
Q That's correct.
There might have been things that were in dispute that you talked about; right?
There were other legal matters that we dealt with throughout the years.
Q nd you worked them out to Mazars' satisfaction?
Correct.
Q Because Mazars kept doing work for the Trump Organization?
Correct.
Q nd kept collecting fees from the Trump Organization?
Correct.
THE COURT: sked and answered many times. Yes, they were paid.
Q nd over the years Mazars prepared audits of 40 Wall Street LLC; correct?

Correct.
Q udits of the Trump Old Post Office LLC?
Correct.
Q udits and compilations for 401 North Wabash Venture LLC?
I believe so, yes.
Q nd in doing so Mazars would have known that these attestation services were performed for the benefit of lenders like Deutsche Bank; right?
I don't know in any particular situation.
Q Okay. Was it part of your review to determine what the audits and compilations prepared for those entities were used for?
No.
Q Were there any loan documents related to Deutsche Bank or Ladder Capital in Mazars' files?
You know, I don't remember seeing any.
Q Would you have understood the basis for preparing audits and compilations?
Yes.
Q Would you have understood that those were going to be submitted to lenders?
It depends on a particular situation.
Q That they could have been submitted to lenders?
I'm aware of various uses for those type of documents;

in this situation, I don't know.
Q nd Mazars would have done a good job in doing audits and compilations -- excuse me.
nd Mazars would have done a good job in doing audits and reviews for those entities; correct?
Correct.
Q nd in doing so Mazars would have performed financial analysis on the books and records of those entities; right?
Of the entities we're doing the audits of?
Q Correct.
Yes.
Q Which include 40 Wall, Old Post Office and 401 North Wabash?
Yes.
Q nd those audits took place as recently as December 31, 2020; correct?
Correct.
Q nd to this day Mazars still stands behind all of the financial statements that audited or reviewed for the Trump Organization; correct?
Correct.
Q Okay. nd then in February you send a letter saying there is a non-waivable conflict; right?
Correct.
Q nd this conflict included the potential that you might

be called to testify in a manner that's adverse to your former client; correct?
Right.
Q nd, of course, you were concerned that the government, the NY G, these people, could bring a claim against Mazars; correct?
s general counsel of Mazars, I'm concerned anybody could bring a claim against it and in this particular situation I was concerned of anybody involved could bring a lawsuit against the Trump Organization.
Q It was --
I'm sorry.
Q It was a factor; right?
Yes.
Q You were concerned?
Correct.
Q nd you wanted to get ahead of it; right?
Well, I knew that if we were able to demonstrate what services we provided that we'd be okay because we complied with professional standards.
Q You wanted to convince the government not to bring a claim against Mazars?
I wanted to explain to whoever would ask what we did and why we did it.
Q You certainly didn't want to -- I'm sorry -- not to

bring a claim against Mazars?
I'll agree with that.
Q nd you exchanged a lot of information; right? Years worth of information?
With who?
Q With the New York ttorney General's Office?
Yes.
Q You spent years of exchanging information with them; right?
We spent years replying to their subpoenas and things like that, yes.
Q Okay. Because you wanted to curry favor with these people so you could get Mazars out of a tricky situation; right?
There was no currying favor involved. It was being a good corporate citizen, responding to subpoenas and explaining the work we did.
Q Okay. So after all of these years, 30 years with Mazars and its prior entities, millions and millions of dollars paid for by the Trump Organization, when the New York ttorney General files a claim, files a paper in court, you take them at their word and never once consult with your former client; right?
No, we didn't take them at their word. We did additional investigation as outlined in the letter.
Q Which did not include talking to your client who paid

you all that money for all those years; right?
Correct.
Q Okay. So that was it? You just kicked them to the curb; right?
We did not kick them to the curb.
Q Okay.
Transcript continues on the following page....

MR. KISE: Your Honor, I hate to interrupt my colleague, but are we taking our morning break?
THE COURT: Is there any chance of finishing this before 12:30?
MR. SU REZ: I could meet with my colleagues and streamline the rest of the presentation.
THE COURT: How about we take a break now and if the team can suggest ways to make this faster, we would appreciate that.
MR. KISE: We will as always. I will note yet again, though, that no one ever hurries up the ttorney General. We are the only ones that always get the hurry up.
THE COURT: ll right. I don't have to respond to that. I don't necessarily accept it. In fact, I don't accept it. Ten-minute break for the next 15 minutes.
(Witness exits the stand.)
(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.
THE COURT: Ten-minute break should not take more than 15 minutes. It shouldn't take 20, but if there is an emergency or something, tell me; but let's try to keep this moving fast.
It's twelve o'clock. How much longer?
MR. SU REZ: We'll, wrap it up.

THE COURT: When?
MR. SU REZ: 15 minutes.
THE COURT: Deal.
THE COURT OFFICER: Witness entering.
(Witness resumes the stand.)
THE COURT: Okay. 15 minutes from 12:02.
Q Mr. Kelly, I want to bring Plaintiff's Exhibit 2994 back up to the screen. I want to draw your attention very specifically to the part that says, "While we have not concluded that the various financial statements as a whole contain material discrepancies. "
fter all these years, Mr. Kelly, and all the investigations by the New York ttorney General's Office and the District ttorney of New York and congressional democrats, Mazars wrote, "While we have not concluded that the various financial statements contain material discrepancy," correct?
Correct.
Q ll of this time later, you still have not identified material discrepancies, correct?
When I wrote this letter, correct.
Q Okay. nd that was --
THE COURT: Wait. Wait. That's not what the question was. The question was --
MR. SU REZ: I'll rephrase the question.
THE COURT: There was no problem with the question.

The problem was the answer didn't answer the question.
Q When you wrote this letter, Mazars had not identified any material discrepancies with the financial statements, correct?
Correct.
Q nd that was after years of investigations by the New York ttorney General's Office, correct?
Correct.
Q nd that was after years of investigations by the District ttorney of New York, correct?
Correct.
Q nd that was after years of investigations by congressional democrats, correct?
Correct.
Q nd that was after years of lawsuits and litigation related to the work that Mazars did for the Trump Organization, correct?
I don't agree that the lawsuits related to the work we did, but the work we did was touched upon in the lawsuits.
Q That was after years of litigation that Mazars found itself in as a result?
MS. F HERTY: Can we move this along? I think we've established it is after a number of years. Can we move this along?
MR. SU REZ: I don't blame you. This is the kind

of harassment that we have had to put up with and you had to put up with it. So I will move it along, but you know it is important that we get out --

MS. F HERTY: Objection to that commentary.

MR. SU REZ: Well, I don't interrupt you in the middle of your questions. I appreciate the fact to finish here.

THE COURT: I don't think you're on the microphone, are you?

MS. F HERTY: Oh, I could speak loudly, Your Honor. I apologize.

THE COURT: Okay. Let hear from the G and then Mr. Suarez and then let you move on. The clock is ticking.

MS. F HERTY: I objected and asked that if we could move it along, it had been asked and answered and then I objected to the mischaracterization.

MR. KISE: We are seriously on the clock? You are kidding about that, right?

THE COURT: I'm not kidding because he is asking the same question over and over and he is misrepresenting.

MR. KISE: I don't think so at all, but this never happens during that their examinations never, never, N-E-V-E-R, sir. I'm sorry, but this never happens that they're on a clock.

THE COURT: Maybe there is a reason.

MS. H BB : Yeah, we know.

THE COURT: We disagree on what the reason is, but let's not try to figure this out in front of the current situation. Please continue.

Q Since we were interrupted, years of investigations by the New York ttorney General, correct.

Correct.

Q Years of investigations by the District ttorney of New York, correct?

Correct.

Q Years of investigation by --

THE COURT: Okay. Okay. You keep saying that.

MR. SU REZ: They keep interrupting me. I'm trying to get through a line of questioning and cross-examination, Your Honor.

THE COURT: Did you forget what he said before about years of investigation, years of this, years of that? Did you forget that?

THE WITNESS: I'm sorry, Your Honor. I do need to hear the question again.

THE COURT: Okay. Let's get the question again.

Q Years of investigations by congressional democrats, correct?

I'm really sorry, but can you do the preamble to it because that's when I got lost in all of this?

Q Sure. There were years upon years of investigations of the work that Mazars did for the Trump Organization, correct?

That's when I said I disagreed it was an investigation of the work that Mazars did. It was an investigation of the Trump Organization and it involved and touched upon work that we did.

Q nd Mazars was put right in the middle of it, right?

No, I don't think so.

Q Mazars had to respond to petitions in the Supreme Court?

No, I don't think we had to respond.

Q Mazars was involved in years of responding to subpoenas by the New York ttorney General's Office, right?

Correct.

Q nd Mazars was involved in years of responding to subpoenas by the District ttorney of New York, right?

Correct.

Q nd Mazars had to dial with books being written by former prosecutors in the District ttorney of New York Office about that investigation, right?

I wouldn't say we had to deal with it, but we are aware of it.

Q You are aware of it? It's there?

Yeah.

Q nd Mazars had to respond to congressional subpoenas,

right?

Right.

Q nd after all of that harassment, you still put in this letter that Mazars had not concluded that the statements contained material discrepancies, correct?

I don't mean to quibble, but harassment, but after years of all of that, I still put this in this letter, yes.

Q It was harassment, Mr. Kelly, and Mr. Bender knew it. He lost his biggest client. He went to the White House and cried in front of the President because he was so upset --

THE COURT: Is this a speech or a question?

MR. SU REZ: It is a question.

THE COURT: It is a question.

Q His entire practice was being decimated by all that harassment and your accounting firm, sir, was being put through years and years and years of torture, harassment and tormentation [sic] by these people, correct?

I will withdraw that question.

nd notwithstanding all of the pressure brought to bear by the New York ttorney General's Office, by the District ttorney of New York, by everyone who examined the work that Mazars did, you still had the fortitude to be honest in this letter and for that I congratulate you.

THE COURT: Is that a question?

MR. SU REZ: I don't want it withdrawn.

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Q I congratulate you that after fearing litigation --
THE COURT: No. It has to be a question. That's what you are here for, to ask questions. He is here to answer them and I make sure -- I'm here to make sure that that happens.
MR. SU REZ: Your Honor, I have no further questions other than I congratulate the witness to have the fortitude to put that in the letter.
THE COURT: Will there be any re-direct?
MR. SOLOMON: One minute of re-direct, Your Honor.
THE COURT: One minute, you got it.
THE COURT: Please proceed with your one-minute redirect.
MR. KISE: re they on the clock?
THE COURT: Yes. It is 12:09. I will stop them him by 12:11.

REDIRECT EX MIN TION

BY MR. FINKELSTEIN:

Q Do you recall on cross-examination you were asked about your investigation about prior to resigning the engagement?
THE COURT: Sorry. I can't hear that question. I didn't hear that question.
Q Do you recall on cross-examination you were asked about your investigation prior to resigning the engagement?
In general, yes.

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Q During the investigation, did you learn that the Trump Organization had failed to provide certain information to Mazars?
The investigation was done through and with counsel, so I'm -- I think it's a privileged issue that I'm not going to talk about.
THE COURT: Will you accept that?
MR. SOLOMON: Your Honor, finding out whether there was or wasn't information withheld, without getting into the details of what that information was, is not privileged. If the witness -- but if the witness is taking that position.
MR. KISE: This is consistent with the position the witness took in the deposition that all of these matters are completely off limits, they're all privileged, and both sides -- the ttorney General didn't question that. We didn't question that. So to ask him that now and put him in a position where he's got to make that determination is inadmissible.
THE COURT: This is off the clock, though. I'm sorry. It is only one minute.
MR. SOLOMON: Your Honor, the witness has asserted privilege. nd if Your Honor upholds that assertion, we have nothing further.
THE COURT: I am upholding it. That's it.
MR. FINKELSTEIN: Nothing further.

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THE COURT: ny recross-examination? Let's get the next witness. The witness is excused.
THE WITNESS: Thank you.
(Witness excused.)
MS. F HERTY: Your Honor, on behalf of the People, Colleen Faherty, we call Michael Cohen as our next witness.
THE COURT: Okay. I had a feeling you would.
THE COURT OFFICER: Witness entering.
THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing, but the truth?
THE WITNESS: I do.
THE COURT OFFICER: Please have a seat. State your name and either business or home address for the record.
THE WITNESS: Michael Cohen, 502 Park venue, New York, New York 10022.

M I C H E L C O H E N, a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE COURT: Please commence the direct examination of Mr. Cohen.
MS. F HERTY: Thank you, Your Honor.

DIRECT EX MIN TION

BY MS. F HERTY:

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Q Good afternoon.
Good afternoon.
Q Before we begin, I just want to ask you a question. re you currently taking any medications that would impact your ability to testify today truthfully and accurately?
No.
Q Okay, thank you.
Can you, please, describe your educational background after high school for me?
College, four years, merican University. Then three years law school, Western Michigan Thomas M. Cooley School of Law.
Q Did you say Cooley School of Law?
Correct.
Q What year did you graduate from the Cooley School of Law?
1991.
Q Do you hold any professional certifications or licenses?
Not any longer.
Q Did you previously hold any professional certifications or licenses?
I did.
Q What professional certification or license did you previously possess?

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JD, New York State Bar ssociation.
Q You were a licensed attorney?
Yes.
Q You don't hold any accounting degrees, right?
Correct.
Q What state were you licensed as an attorney?
New York State.
Q Do you recall at what point in time your license was revoked to serve as an attorney of law?
2018.
Q nd what was the basis for your license to practice law was revoked?
The charges that emanated from the Southern District of New York.
Q Fair to say that you have been convicted of a crime, sir?
Correct.
Q nd just to refresh your recollection, if I stated that there was a committee decision filed on February 28, 2019, do you have any basis to dispute that that was the date --
Oh, it would be 2019. Sorry. Yes.
Q Thank you.
What were the crimes that you were convicted of in reference to your testimony just now about the Southern District of New York?

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I pled guilty to five counts of tax evasion, one count of misrepresentation to a financial institution, two counts of campaign finance violation as well as one count of misrepresentation to Congress, 1001 violation.
Q So let me see if I have these correct. You pled guilty to five counts of evasion of assessment of personal income tax pursuant to 26 U.S. Code Section 7201?
Correct.
Q nd would that be for the calendar years of 2012 through 2016?
Yes.
Q Was that related in connection with what business was that tax evasion crime related to?
It wasn't connected to any specific business. It was personal tax.
Q Okay. Was it related to anything in connection with a taxi and limousine business you operated?
I owned New York City taxi medallions which were leased to an agent. I had income from that agent which it was stated was not reflected in my tax returns.
Q nd that -- the guilty plea in connection with those five counts of personal income tax evasion was accepted by a Federal Court in the Southern District of New York, correct?
Correct.
Q nd with regards to the sixth count in the Southern

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District of New York, is it correct that that was the criminal charge of making a false statement to a financial institution in connection with the credit decision between the years 2015 to 2016.
It was in connection with a HELOC, a home equity line of credit, application that they stated had a misrepresentation on it.
Q nd that's H-E-L-O-C?
Correct. cronym.
Q nd that would be in violation of 18 U.S. Code Section 1014, correct?
Correct.
Q nd the seventh count, is it correct that you pled guilty to willfully causing an unlawful corporate contribution from in or about June to October of 2016?
Yes.
Q nd that is in violation of 52 U.S. Codes Sections 30118 (a), 30109 (d)(1)(a) and 18 USC Section 2(b)?
Yes.
Q nd then the eighth count of that criminal indictment in the Southern District of New York was a plea of guilty to making an excessive campaign contribution in or about October of 2016, yes?
Yes.
Q Then I think you also said that you pled guilty to a

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ninth count; is that correct?
That's correct.
Q Was that in a separate prosecution dated November 29th, to 18?
It was 2018. Yes, it was.
Q Was that pursuant to a plea agreement with the Special Counsel's Office that you made false statements to the United States Congress in violation of 18 USC Section 1001(a)(2)?
Yes.
Q nd you were sentenced for those crimes?
I was.
Q nd did you attempt at any point to cooperate with the government in connection with your guilty pleas?
I did cooperate with the government, yes.
Q However, you did not receive 5K1 or substantial assistance letter from the federal government, did you?
No, I refused.
Q Did you receive any downward variance or departure in your sentencing guidelines as a result of any cooperation you may have provided to the government?
No.
Q There was no downward variance associated with the sentencing guidelines?
The downward variance was a result of the plea, not because of any benefit that I would receive.

Q nd the downward variance, about how long -- do you recall the length of the sentence you were sentenced to?

36 months incarceration, 36 months between home confinement and supervised release.

Q Was there also a concurrent two-month sentence imposed as a result of the additional Special Counsel's Office information?

Yes.

Q nd you did, in fact, serve that time in a federal correctional facility?

I did.

Q Have you ever made any public statements concerning the legitimacy of those convictions?

More than one.

Q nd why did you do that?

Because there was no tax evasion. t best, it could be characterized as a tax omission. I have never in my life not paid taxes. I have never requested an extension until 2017. Every year I had paid, no extensions on time, what my CP accountant directed me to pay.

Q Were there, in fact, crimes that you pled guilty to that you did feel you were guilty of committing those crimes?

Yes.

Q So why, then, are you making statements about the legitimacy of the Southern District convictions if there are

some that you feel, for example, were not crimes like a tax omission?

One has nothing to do with the other. The tax violations as I've stated many times should not have been brought in and of itself. The same with the HELOC violation. I had had a HELOC on my property for more than a decade and I wanted to correct the record because when all of this started, it was overwhelming, the amount of misinformation, disinformation, mal information about me was overwhelming and enormous.

On top of that, there was also the second campaign finance violation which dealt with Karen McDougal. I acknowledged my complicity in the Stormy Daniels matter, but the Karen McDougal, I never paid Karen McDougal. I was tasked to review documents to ensure that Mr. Trump was protected and that was done through MI, National inquirer and David Pecker, but I am also lastly complicit with the lie to Congress and as I have stated many times, it is important to finish the sentence and talk about what that lie was. That lie was the number of times that I stated to the Senate Permanent Select Committee on Intelligence how many times I spoke to Mr. Trump about the failed Moscow -- Trump Tower Moscow project.

I had stated three. The true answer was ten and I did that at the direction of, in concert with and for the benefit of Mr. Trump. There was a whole group of people from lan Garten

to J. Sekulow, Ivanka, Jared, bby Gold (ph), Ty Cobb, many people were involved in the formation of that statement. My complicity resulted in -- from me reading it into the record and asking that the document be made part of the record.

MR. KISE: Your Honor, I just move to strike that entire answer. I don't know if that was a book that he was writing, but it wasn't responsive at all to the question. I mean, it was just a long narrative about, you know, invective about Trump and who knows how many other people. I'm sure I'm going to be included here soon, but I don't -- I don't think that that was at all responsive to the question.

THE COURT: Overruled. I believe it was responsive. Could have been shorter, but it was responsive.

Q Fair to say you still stood up in court and said to the Southern District of New York, "I'm guilty of certain crimes." "I accept responsibility for the crimes." nd you served federal incarceration in connection with those crimes, correct?

Correct.

Q nd fair to say a prosecutor stood up in front of the Southern District of New York and stated, "The" factual allegations in support of the crimes for which you had been indicted and pled guilty," correct?

Correct.

Q nd a federal judge accepted those factual allegations,

that they would be proved in connection with your guilty plea, correct?

Correct.

Q nd I believe you stated it, but in connection with the crimes alleged concerning an unlawful corporate contribution, was that alleged conduct performed during the course of your employment at that time?

Employment at the Trump Organization?

Q Yes, sir.

Yes.

Q nd for the crimes alleged concerning an excessive campaign contribution, was the alleged conduct there performed during the course of your employment at that time?

Yes.

Q nd who was your employer at that time?

Donald J. Trump.

Q nd for the crimes alleged concerning making a false statement to Congress, was the alleged conduct performed during the course of your employment at that time?

Yes.

Q nd who was your employer at that time?

Donald J. Trump.

Q m I correct that you were Mr. Donald J. Trump's personal counsel, sir?

I was.

Q So let's take a step back and I want to talk further about your professional background before the criminal convictions, okay?
Sure.
Q What was the nature of your legal practice when you first began working as an attorney, just generally?
Negligence, tort, medical malpractice.
Q Where did you work after you graduated law school?
It is called Estrin & ssociates, 225 Broadway.
Q Med-mal negligence firm?
Yes.
Q How long were you there?
Five years.
Q ny titles associated with that position?
ssociate.
Q ny other titles?
No, ma'am.
Q Did there come a point in time when you left Estrin?
Yes.
Q Where did you work after Estrin?
I left Estrin & ssociates because I bought into a company called Manhattan Maintenance. It was a New York City yellow cab medallion company. I started my own law firm at the time, but I also operated the yellow cabs out of the same facility.

Q nd for how long were you there?
From 1995 to 2002.
Q nd was it just the title of being the owner at Manhattan Maintenance or was there another title associated with that work?
I also had a law practice.
Q Was there a name of a law practice?
Michael D. Cohen & ssociates.
Q In 2002, did there come a point in time when you left the Manhattan Maintenance Company?
Yes.
Q Tell me about that departure.
I sold my half of the company to my ex-partner and decided to take a little time for myself and ultimately then created -- continued with the law practice elsewhere.
Q The Michael D. Cohen & ssociates law practice?
Yes.
Q nd what was the nature of the Michael D. Cohen law practice?
It was predominantly negligence, tort, similar to what I started with, but then I started doing some real estate and some business law.
Q Was that transactional work or can you describe for me the nature of the real estate work you engaged in at that time?
It was acquisitions of real estate on behalf of clients

as well as representing various different business owners, some of whom were in the auto business.
Q nd did there come a point in time when you joined a firm named Phillips Nizer?
Yes.
Q When was that?
2015, 2016. I'm sorry. 2006, 2007, somewhere in that area. I'm sorry. 2005, 2006, in that area.
Q 2005 or 2006?
Yeah.
Q nd what happened to the Michael D. Cohen & ssociates firm?
Merged it into Phillips Nizer.
Q t Phillips Nizer, did you have a title when you merged together?
I did.
Q What was your title?
I was a partner.
Q nd how about once you joined Phillips Nizer; what was the nature of your practice then?
Business development as well as continuing with my client base.
Q The client base that you had developed when you were in private practice at Michael D. Cohen & ssociates?
Correct.

Q Fair to say that your practice included commercial real estate work?
Yes.
Q Residential work as well?
Mostly for myself.
Q Was it -- would you characterize the practice as a litigation practice?
We had some litigation, but I would not say it was -- it was primarily litigation at that time.
Q nd did there ever come a point in time when you stopped working for Phillip Nizer?
Yes.
Q When was that?
That was in 2007.
Q nd what occurred such that you stopped working for the Phillip Nizer firm?
I had had a meeting with Mr. Trump at the Trump Organization and he had asked me to join his company as executive vice-president of the Trump Organization and special counsel to him.
Q So in or about 2007, you joined the Trump Organization to work --
March of 2007.
Q nd that was to work for Donald J. Trump?
Correct.

Q Can you broadly describe that process about how -- of how you came to work for the Trump Organization, just broadly, please?

I was introduced to Mr. Trump through his son Don, Jr. and it emanated from a dispute that took place at one of the properties. I had owned a unit there, family members owned units there, friends owned units there, and the goal was to remove the board and to replace the board with a more favorable board.

We did it successfully. s a result, I was asked to handle a few other matters for Mr. Trump which also resulted successfully and ultimately while sitting in his office, he asked me if I would like to leave that sleepy, old firm, meaning Phillip Nizer, and join him.

(Continued on the next page.)

Q Fair to say you accepted that invitation to join the Trump Organization in 2007?

I did.

Q nd when I joined the Trump Organization in March of 2007, did you have a title?

I did.

Q What was your title?

It remained the same from beginning to end, executive vice president of the Trump Organization and special counsel to Donald J. Trump.

Q Let's take to those in turn.

Executive vice president of what? Was there a particular department division that you were an EVP over?

No, it was of the Trump Organization. It was just a standing. There were -- after Mr. Trump there were about a dozen plus executive vice presidents, including the three children and then others were vice presidents and so on. So it was basically a title of standing.

Q Did EVP reflect a level within the hierarchy?

Yes.

Q nd where within the executive level hierarchy would an EVP have standing?

Directly under Mr. Trump.

Q Thank you.

nd you also stated you had a second title, "special

counsel?"

Correct.

Q What was your understanding of what special counsel meant?

I reported and only handled work for Mr. Trump and so I was his special counsel. Whatever issues he had, whatever created ire for him, he would bring it to me in order to resolve.

Q So you were specifically serving as a personal counsel to Donald J. Trump?

Correct.

Q Who did you report to at the Trump Organization?

Donald Trump.

Q nyone else?

No.

Q Was that true for the entire time that you worked at the Trump Organization?

Yes.

Q So the only person who asked you to perform work was Donald J. Trump?

Correct.

Q nd the only person who would provide approval for the work you performed was Donald J. Trump?

Correct.

Q Okay. nd just so that I have the same understanding

as you. I've used the phrase, "The Trump Organization."

What is your understanding of what the phrase "The Trump Organization" means?

The Trump Organization is a company that is predominantly in real estate as well as branding. During the times that I was there as well it also had television and media operations as well.

Q nd are there a series of common enterprise of corporate entities that operate under this umbrella term, "The Trump Organization?"

Yes.

Q Do you know who owns or is the beneficial owner of that enterprise of corporate entities under the umbrella "Trump Organization?"

Yes.

Q Who is that?

Mr. Trump.

Q Okay. Focusing on the organization, were there different departments at the Trump Organization, for example, an accounting department, a legal department?

Yes.

Q You didn't fit within the legal department, did you?

No.

Q Your position was held outside of the legal department, yes?

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Correct.
Q But there was an accounting department there?
Yes.
Q Who do you understand worked in the accounting department at the Trump Organization?
Well, several people worked at the accounting, but the CFO for the Trump Organization was llen Weisselberg.
Q nyone else you know who worked in the accounting department other than the CFO, Mr. Weisselberg?
There were many people, Deborah Tarasoff, Jeff McConney. When I first started there there was a gentleman by the name of Eric Sacher who then got replaced with -- I apologize. I am blanking on his name, but there was quite a few people in the accounting department.
Q nd in the legal department, did you ever have occasion to work with members who were employed within the legal department at the Trump Organization?
Yes.
Q Does the name Jason Greenblatt sound familiar to you?
When I started Jason Greenblatt was general counsel along with George Ross.
Q nd was he still at the Trump Organization by the time you departed in 2017?
Yes.
Q How about llan Garten? Is that a name you're familiar

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within the legal department?
Yes.
Q Who is lan Garten?
He was an attorney at the Trump Organization, also an executive, but he'd ultimately became general counsel after Jason Greenblatt's departure to go pursue negotiations with Middle East after Mr. Trump became president elect.
Q nd fair to say you did not report to either of those individuals, yes?
Correct.
Q I'd like to talk about some of the other Trump Organization executives.
re you familiar with the name Donald Trump, Jr.?
Yes.
Q How are you familiar with that name?
That's how I was first introduced to Mr. Trump was through his son and he is the namesake of his father.
Q nd Mr. Trump, Jr., did he have a title during the time when you worked at the Trump Organization?
Yes.
Q What was his title?
Executive vice president and there was a second part to it, which had to do with development.
Q Do you recall the specific title?
I don't.

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Q So it may have been something along the lines of executive vice president of development and acquisitions?
Development and acquisitions, yes.
Q Did that refresh your recollection about the title?
Yes.
Q Okay. Thank you.
nd what is your understanding of Mr. Donald Trump, Jr.'s role during the time that you were employed at the Trump Organization?
Development in acquisitions of real estate opportunities that would be presented to the Trump Corporation.
Q nd when we were talking about that hierarchy before, fair to say that Mr. Donald Trump, Jr., he was at the top of the hierarchy with the title executive vice president similar to you?
Yes.
Q Okay. re you familiar with the name Eric Trump?
I am.
Q How are you familiar with that name?
Worked at the company as well as I was on his Eric Trump Foundation board, which benefits St. Jude Children's Hospital working with family.
Q nother one of the Trump family members; correct?
Correct.
Q nd did Mr. Eric Trump hold the title during the time

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while you were working at the Trump Organization?
Yes.
Q What was Mr. Eric Trump's title?
Same as Don, Jr.'s executive vice president and development and acquisitions.
Q nd what is your understanding of the work Mr. Eric Trump performed at the Trump Organization during the time you worked there?
Same development and acquisitions of real estate opportunities.
Q ny particular areas that you're familiar with that he had a specialty in?
He concentrated on golf as well as again different opportunities that would come in to the company. Don, Eric and Ivanka would split various opportunities where each one was attached to a specific opportunity.
Q nd you beat me to my next question.
re you familiar with the name Ivanka Trump?
I am.
Q How are you familiar with the name Ivanka Trump?
lso one of Mr. Trump's three children, plus we also live in the same building.
Q nd did Ms. Ivanka Trump have any titles during the time when you were employed with the Trump Organization?
Yes.

Q What was the title Ms. Ivanka Trump held?
Executive vice president of development and acquisitions as well.
Q nd I didn't ask this question about Mr. Eric Trump, but Ivanka, Donald, Jr. and Eric Trump, they all held the title executive vice president, yes?
Yes.
Q nd they were in that higher level of the hierarchy, yes?
Yes.
Q Ivanka Trump, Eric Trump, Donald Trump, Jr., did they report to you at anytime during your employment with the Trump Organization?
No, ma'am.
Q To whom did those three individuals report to while you were employed by the Trump Organization?
Their father.
Q Okay. nyone else?
No, ma'am.
Q We've already stated the name llen Weisselberg. He was the CFO of the Trump Organization, yes?
Yes.
Q What understanding do you -- if any, do you have as to his role at the Trump Organization?
He was the chief financial officer. Every financial

transaction went through his office.
Q Can you give me an example? What do you mean by that?
If there was an invoice that came to me, I would be required to approve that invoice, put a line on, write "approved," sign my name, put another line underneath it and that would then get presented to llen. It would then, of course, go to Mr. Trump's office for initial signature before a check would be processed.
Q So llen Weisselberg managed the financials of the Trump Organization?
Yes.
Q re you familiar with the name Jeff McConney?
I am.
Q How are you familiar with the name Jeff McConney?
Worked with him at the Trump Organization.
Q nd what is your understanding of Jeff McConney's titles that he -- title that he held while you were employed at the Trump Organization?
He was comptroller. He worked predominantly for llen Weisselberg.
Q So Mr. McConney worked in the accounting department, yes?
Yes.
Q Was he a direct report to Mr. Weisselberg?
Yes.

Q Do you know if he reported to anyone else at the Trump Organization?
Mr. Trump, if it would be necessary.
Q nyone else?
Not that I'm aware of.
Q nd your general understanding of Mr. McConney's role?
He handled all of the bookkeeping.
Q nything else you recall about Mr. McConney's role?
No, ma'am.
Q re you familiar with a document titled the Statement of Financial Condition for Donald J. Trump?
I am.
Q nd how are you familiar with that title?
I've seen them as well as I've worked on them.
Q Describe that for me. What do you understand generally that document to be?
That was a complete listing of all of the assets of the Trump Corporation, the Trump Organization with each asset broken down into an asset class, the asset class described and the value was placed on the asset, as well as any existing liabilities. The goal was to basically create a statement of financial worth.
Q For whom?
Donald J. Trump.
Q nd do you have any understanding about why the

document was created?
Initially.
Q Yes.
No.
Q During the time you were working at the Trump Organization did you form any understanding about why the document was created?
It was to be used for purposes of demonstrating net worth for acquisitions for insurance purpose.
Q ny other reasons?
Not that I'm aware of.
Q nd when you say that this document was to be used to demonstrate net worth for acquisition for insurance purposes, is it your understanding that the document was to be shared with third parties or was that for internal purposes?
Shared with third parties.
Q Do you have any understanding as to the ways in which the Statement of Financial Condition in particular was used?
Yes.
Q Describe for me some of those ways.
So as it related to insurance the document would be presented to the various insurance brokers that were brought to the company from the main broker, ON. They were permitted to take notes off of the document but not permitted to keep the actual document itself and the benefit was showing that the

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assets had extremely high values with low liabilities in order to obtain better insurance premiums.
Q You also mentioned acquisitions. Were the statements of financial conditions presented to any third parties for purposes of an acquisition?
Yes.
Q What third parties are you familiar with?
I was involved in the potential acquisition of the buffalo bills.
Q ny other acquisitions you can think of?
The Miami Doral property.
Q nything else?
Not off the top of my head.
MS. F HERTY: nd I just want to check on timing, Your Honor.
THE COURT: I was going to give you the five-minute warning in one minute. So we'll break at 12:55.
MS. F HERTY: Thank you, Your Honor.
Q Turning back to the creation of the document focusing on the time that you were employed at the Trump Organization. nd I'll draw your attention to the period beginning in 2011. Do you have any understanding as to who created the document?
I do not.
Q Do you have any understanding as to whether -- as to what, if any, individuals at the Trump Organization worked on

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the specific numbers contained in that Statement of Financial Condition beginning in 2011?
In 2011, I don't recall, but 2012 and '13, '14, and '15, I do.
Q I'm going to show you some documents that have already been admitted into evidence.
MS. F HERTY: So Tommy, if you don't mind handing to the witness Plaintiff's Exhibit PX 787.
Q I'm going to hand you five of these documents and we'll briefly just look at them, okay, Mr. Cohen?
Yes.
MS. F HERTY: Tommy, the second document will be PX 815, the third will be PX 707, the fourth will be PX 730, and the fifth will be PX 729. So we can start with PX 787.
Is it up on the screen?
Q PX 787 is on the screen.
Okay.
Q nd just take a quick look at this document and tell me, generally, if you recognize the form of this document, sir.
I do.
Q What do you recognize this to be?
This is the Statement of Financial Condition for Donald J. Trump.
Q nd is it dated as of June 30, 2011?
Yes, it states June 30th of 2011.

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Q Does this appear to be a document you may have worked on during the time you were employed at the Trump Organization?
I don't recall.
Q I'll draw your attention to the third page -- page four of this document, and it ends in the number 3134.
Yes.
Q Do you see that page there?
I do.
Q Do you recognize this page as a document page you may have worked on during your time period working for the Trump Organization?
I do.
Q How do you recognize this page? What do you recognize it to be?
I recognize the entire document.
Q Describe for me that recognition.
It's a document that I have seen before. It's a document that I had in my possession and a document that I just recognize.
Q Were you ever asked to perform work on Mr. Donald J. Trump's Statement of Financial Condition?
Yes.
Q nd before you tell me more about the work you were asked to perform, was that work asked in your capacity as Mr. Donald J. Trump's personal attorney or was it for a business

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reason?
For business reason.
Q nd what was the work you were asked to perform for Mr. Donald J. Trump with regards to the Statement of Financial Condition?
I was tasked by Mr. Trump to increase the total assets based upon a number that he arbitrarily elected and my responsibility along with llen Weisselberg predominantly was to reverse engineer the various different asset classes, increase those assets in order to achieve the number that Mr. Trump had tasked us.
Q nd when you say "achieve the number," what number are you talking about?
Whatever number Mr. Trump told us to.
Q Was it Mr. Trump's ultimate net worth as identified on the Statement of Financial Condition?
Yes.
MS. F HERTY: I think now would probably be a good time to take a break, Your Honor.
THE COURT: Okay. You're giving up two minutes here.
ll right, we're going to break for lunch. See you all if you want to come back at 2:15 on time, please.
(Whereupon, there is a luncheon recess in the proceedings.)

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F T E R N O O N S E S S I O N

THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: We just need a witness.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: Okay. Let's continue with the direct examination of Mr. Cohen.

MS. F HERTY: Thank you, Your Honor.

CONTINUED DIRECT EX MIN TION

BY MS. F HERTY:

Q Mr. Cohen, you recall at the break you testified to reverse engineering numbers on the statements of financial condition each year while you were working at the Trump Organization, yes?

Yes.

Q nd I believe you were deposed in this case. Did you testify that between 2011 and 2015 you worked on those years' Statement of Financial Condition?

gain, I stated I don't recall if I worked on 2011, but

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'12, '13, '14, '15, yes.

Q nd you -- who assigned you the role of working on the Statement of Financial Condition?

Mr. Trump.

Q nyone else?

Mr. Trump.

Q nd did you work with anyone in connection with your work on the Statement of Financial Condition?

Yes.

Q Who?

llen Weisselberg.

Q nyone else?

Directly with llen Weisselberg.

Q Describe that for me. What was the work that you did with llen Weisselberg on the Statement of Financial Condition?

We would take a look at the various different asset classes that are broken down in the document and based upon the number that Mr. Trump wanted the document to ultimately state we would look at the assets and increase its values in order to achieve the number.

Q nd would you look at a particular document in order to perform that task?

No.

Q Let's pull out the 2011 Statement of Financial Condition, Plaintiff's Exhibit PX 787. It's already in

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evidence.

nd I believe you testified before you have seen this document before; correct?

Correct.

MS. F HERTY: nd let's turn to the third page of this Document. One more.

Q Was this particular page of assets relevant to the work you performed on the Statement of Financial Condition?

Yes.

Q How is this particular page relevant to the work you performed on the Statement of Financial Condition?

We would take this specific list of assets and we would figure out which specific line to increase the number again to reverse engineer it into the total asset that Mr. Trump sought.

MR. KISE: Your Honor, objection on foundational grounds. The witness has testified that he didn't look at any particular documents and then he testified before that -- that he doesn't recall having anything to do with 2011. So now we're looking at 2011 and I don't believe the witness has any foundation to look at 2011.

THE COURT: Did he say he wasn't sure about 2011?

MR. KISE: We can look back. I believe he said "I don't recall working on 2011," but does recall working on '12, '13, '14, '15.

THE WITNESS: That's not what I said.

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MS. H BB : When he first took on the stand he said he did not work on 2011.

MS. F HERTY: nd, Your Honor, I always appreciate when learned counsel can give me a -- I'm happy to ask some additional questions to make the record clear, if that's okay.

THE COURT: ll right. Well, let's lay a foundation if one can be laid for this.

Q So what would be the basis for doing, for example, the work you performed on 2012? Would you make numbers out of thin air or was there a document or information you looked at in order to calculate new numbers?

We would have taken the document that you have up right now, the June 30, 2011 document, and we would mark it up by hand in order to increase each of the asset lines, again, to get to the total asset number that Mr. Trump tasked us to achieve.

Q nd when you say, "we," who are you referring to?

Myself and llen Weisselberg.

Q Did this conversation or these conversations marking up the 2011 document, for example, occur in the presence of anyone else?

Yes.

Q Who?

Mr. Trump.

Q nd what, if anything, do you recall Mr. Trump would

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say about marking up the document referring in this instance to the 2011 Statement of Financial Condition for the 2012 numbers?

I would receive a phone call, generally it would be from Rhona Graff, Mr. Trump's executive assistant, "Mr. Trump would like to see you" and I would come into the office. llen Weisselberg would either already be there or come with me and the topic was the Statement of Financial Condition. He would look at the total assets and he would say, "I'm actually not worth four and a half billion dollars. I'm really worth more, like, six." Okay. He would then direct llen and I to go back to llen's office and return after we achieved the desired goal.

Q nd I'll direct your attention to the following page. nd at the bottom of this page do you see a line entry at the top, it says, "liabilities and net worth." Do you see that there?

I do.

Q nd at the bottom there is a line entry. It says "net worth." Do you see that there?

I do.

Q nd was this particular number the number you were tasked with bringing up according to Mr. Trump's directive as you just testified?

Yes.

Q Okay. Now, turning back to the first page. Was there a particular procedure for you and

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Mr. Weisselberg to distribute the assets on this page that you would alter or backup the numbers into?

There was no specific program within which to change the numbers. It was, again, reverse engineering.

So, for example, if they brought on a new asset we, of course, would add that to the list of assets, but then there were also other assets like Trump Park venue. We would take the number of units that Mr. Trump owned as the sponsor developer of the property and we would look at numbers that were being achieved elsewhere; what's the highest price per square foot achieved in the city, and we would use those numbers in order to inflate the value of these apartments.

Q re those called comparables?

Comparables -- you could call them comparables, but comparables imply that they are similar.

Q nd is it your understanding that the quote/unquote "comparables" were not similar?

No.

Q What is your basis for saying that?

Some of the comps or comparables were predicated off of ground up developments with nine, ten feet ceilings, unobstructed views, not inhibited by rent stabilized or other programs, so no, they were not comparables. They are just different.

Q So Mr. Trump would task you with reaching a number for

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2012, you would look at the prior year's number; correct?

Correct.

Q nd you would go into llen Weisselberg's office to review the numbers to see where you could add value. Is that fair?

Fair.

Q nd was anybody present for those conversations?

There were people who had come in to the office that were providing llen with information, but these conversations were primarily between Mr. Trump, myself and llen Weisselberg.

Q nd in the conversations between you and Mr. Weisselberg in his office, how would you find these comparable numbers? Was there a particular search you would do or research you performed?

Well, some of the assets that we used as comparables I just know because I am in the real estate industry, so I read an article about an apartment that, you know, that traded or I would look on Google.

Q nd did you keep the notes of your meetings with Mr. Weisselberg as to the values you were adding to the asset categories on Mr. Trump's Statement of Financial Condition?

No.

Q Why not?

I would sit down with llen and we would make the changes. That document would then be photocopied that had all

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of the changes at which point in time llen and I would return to Mr. Trump demonstrate that we achieved or close to the number that he was seeking and I had no use for that document any longer.

Transcript continues on the following page....

Q nd at some point, did you become aware that the numbers -- the values you had added to the Statement of Financial Condition, let's focus on 2012, that they were accepted by Mr. Trump?

Yes, he's the only one that could accept them.

Q How did you come to understand that Mr. Trump accepted the values you added to the Statement of Financial Condition for 2012?

Because he knew the Statement of Financial Condition would be printed by Mazars who is the accounting firm for the Trump Organization and we would receive the bounded copy.

Q Did you have any relationship with Mazars in the process of drafting the Statement of Financial Condition?

No.

Q Who, if anyone, do you understand to have been interacting with Mazars in the creation of the Statement of Financial Condition?

Mr. Trump and llen Weisselberg.

Q nd with regards to the process between the time Mr. Trump tasked you with reverse engineering that net worth number to the time when you met with llen Weisselberg in his office to eventually returning back to Mr. Trump with the numbers for his approval, about how long did that process take?

For the most part, several days.

Q nd what, if any, understanding do you have as to who

Mr. Weisselberg relied on to assist him in adding value to the numbers on these Statements of Financial Condition?

Jeffrey McConney.

Q nyone else?

Potentially the children Don, Ivanka and Eric.

Q What, if anything, is your understanding Mr. McConney provided to Mr. Weisselberg on the asset values?

He had all the numbers. He was the one that controlled the computer with the fobs in order to see, for example, cash and marketable securities. He would also be the one to provide llen with the gross rent roll for 40 Wall Street or any of the other assets that Mr. Trump owns that were being rented or leased.

Q nd you made mention of the three adult children. What is your understanding as to the three adult children's role in assisting Mr. Weisselberg in valuing the assets in the Statements of Financial Condition?

Well, first would be which projects that they individually were spearheading and then to ask them what other, you know, values exist for the purpose of this asset.

MR. KISE: Objection, Your Honor. I'm not sure that's entirely responsive, if at all responsive. Is the witness testifying that he spoke with these individuals or this is his understanding that one else spoke with these individuals? The question calls for -- the question

appears to call for speculation based on the foundation that has not yet been laid, but I don't -- I don't -- it is not clear what he's testifying to at all.

MS. F HERTY: Your Honor, that appears to be a perfectly fair question by me with a responsive answer and if Mr. Kise disagrees with the response, he's perfectly entitled to cross-examine.

THE COURT: You want to just read it again for everybody's benefit out loud, obviously.

Q You made mention of the three adult children. What is your understanding as to the three adult children's role in assisting Mr. Weisselberg in valuing the assets in the Statement of Financial Condition?

MR. KISE: He has no foundation other than hearsay. If that's what he's saying, unless he's testifying that he spoke with the children directly, that's different.

THE COURT: Well, I don't think he had to speak to them. I think it was more of an observation, but see if you can ask it again with -- either ask a foundation or the question with more of a foundation. I'm not sure exactly also the phrase "what's your understanding." What did you see, observe, hear?

Q Did you have -- you had a general understanding as to Eric Trump's role at the Trump Organization while you were employed there, yes?

Yes.

Q You similarly formed an understanding as to Donald Trump, Jr.'s role at the Trump Organization while you worked there?

Yes.

Q Similarly, you formed an understanding of Ivanka Trump's role while working at the Trump Organization?

Yes.

Q Did you have occasion to observe Mr. Weisselberg interacting with those three adult children as it concerned the Statement of Financial Condition and his preparation of values?

I did not observe them specifically engage in conversation.

Q Did you at any point form an understanding that Mr. Weisselberg was, in fact, consulting with the three adult children with regards to his valuations on the Statements of Financial Condition?

Yes.

MR. KISE: Objection.

THE COURT: I think the next question is taken with the first question is acceptable, so...

Q How did you form that understanding?

llen would state that, "I need to speak to Don, Ivanka, Eric" regarding whatever the asset was.

THE COURT: Well, did he state that he did speak to

them beyond "I have to speak to them"?
THE WITNESS: No, he did not actually make that overt statement. However, at the end, there was a new Statement of Financial Condition that was compiled that had the changes.
THE COURT: How do you know that the children had any input into those new numbers?
THE WITNESS: I do not.
Q ny other understanding as to others who worked with Mr. Weisselberg on the valuations for the Statements of Financial Condition?
Jeff McConney.
Q Other than Mr. McConney?
I don't know who else llen spoke with.
Q nd just to clarify, what were the methods of communication you employed at the Trump Organization? Did you communicate frequently via e-mail?
No.
Q How about via text message?
No.
Q How about handwritten notes concerning the Statements of Financial Condition?
Only to the extent that we changed the numbers and the changed numbers would be in red pen.
Q nd you didn't retain copies of those communications,

right?
I do not believe so.
Q So looking at this exhibit, which is still on the screen, the 2011 Statement of Financial Condition, focusing on the work you performed for the 2012 valuation, what, if any, of these assets do you recall that you provided valuations for?
Trump Park venue, Trump World Tower at United Nations, 100 Central Park South to the extent it was part of the commercial portion; properties under development specifically with Beverly Hills, Miss Universe Pageant and potentially other assets.
Q nd as to the other assets, was llen Weisselberg responsible for those assets?
Yes.
MS. F HERTY: Let's put that to the side. Can we pull out 2012, please.
Your Honor, I'm handing up to the witness the June 30, 2012 Statement of Financial Condition. It is marked already as an Exhibit PX 815.
Q Do you recognize this document, Mr. Cohen?
I do.
Q nd do you recognize this as a document that you worked on in connection with Mr. Trump's assignment that you reverse engineer the values on Donald J. Trump's Statement of Financial Condition?

Yes.
Q For what year were you using the 2012 Statement of Financial Condition to perform work on Mr. Trump's Statement of Financial Condition?
That would then go for the 2013.
Q So let's turn to the third page of this document. We have it on the screen here. Similar to the prior year Statement of Financial Condition, right, listing of assets?
Correct.
Q Then if we turn to the next page, "liabilities" and "net worth," yes?
Yes.
Q nd there's a net worth entry at the bottom of the page, correct?
Correct.
Q Was that another net worth number that you were directed to reverse engineer to a higher number?
Yes.
MS. F HERTY: Going back to the very first page. Thank you, shley. The assets page.
Q Do you recall which assets for the 2013 values that you worked on in connection with your assignment to reverse engineer the values on the Statement of Financial Condition?
Possibly Trump Tower, Trump Park venue, Trump World Tower United Nations, possibly 100 Central Park South to the

extent of the commercial, mansion at Seven Springs, Miss Universe Pageant as well as possibly other assets.
Q nd again, the ways in which you would increase the values of these particular asset classes, what would you do?
gain, we would take a look at either comparables or new potential lease tenants, for example, in Trump Tower and come up with a multiple if you were taking that to market to securitize it.
Q ny other ways in which you would inflate the assets on these asset classes for the 2013 Statement of Financial Condition?
gain, looking at comparables into the area Seven Springs was a little different because there was a deal that was struck to subdivide the property. So we would look at if it was for the -- for this year, it could have been 2013 or -- with the subdivision to provide some sort of number attached to each individual parcel.
Q So is it fair to say you would Google a number for assigning a value to the lots at the mansion at Seven Springs?
MR. KISE: Objection. Leading.
Q Describe for me the number.
THE COURT: Sustained.
Q Describe for me the number that you would use for Seven Springs.
You look at some of the other homes that are in the

area and you use that as a basis for the subdivision parcel lots.
Q When you're looking up the -- these numbers, are you calculating time as a factor in those values?
No.
Q Is the value an immediately-achieved number that you're assigning?
No.
Q Is the number a comparable or a reasonable comparable, I think we spoke about comparables before, to the asset class?
It would depend.
MR. KISE: Objection. Is this witness now testifying as an expert witness on real estate or are we going to add that to his series of credentials? I don't know that he is -- that question calls for expert -- an expert conclusion. Is it a reasonable comparable? That's the province of an expert and unless Mr. Cohen -- the prosecution wants to qualify Mr. Cohen as an expert in that, I'm sure he'll answer it and say he is.
THE COURT: I found it a confusing question. I will sustain the question.
MS. F HERTY: That's okay. I want to ask the question in a non-objectionable way, Your Honor, so give me a moment, please.
THE COURT: Of course.

Q So you made mention that the Seven Springs asset was a little different. Your testimony just now, was that specific to the particular year 2013 or is that a general recollection?
General recollection. I don't know if it was 2012, '13.
Q You generally have a recollection, though, that you were looking at other comparable assets that could value the subdivided property at Seven Springs; is that fair?
Yes.
MR. KISE: Objection. Leading.
Q How would you describe --
THE COURT: Wait. Wait. Sustained.
Q How would you describe those comparable assets that you were looking at for the purpose of that Seven Springs subdivision?
I'm sorry. I don't understand your question.
Q What were you looking at? How were you coming up with the numbers?
So I know the area where Seven Springs is located. It's the top of the hill, the very top and we looked at -- I looked at, for example, the value of a house that was beneath Mr. Trump's property, Nelson Peltz, and we took that as a number and then we added to it because it would be new construction, it is higher up the hill and so on, and that's how we ended up increasing.

Q nd do you know if any of the adult children also performed work at the Seven Springs -- for Seven Springs, LLC, a Trump Organization entity?
I don't know which one, no.
Q Same question that I was asking before about 2013. Who tasked you with adding values to the Statement of Financial Condition for that year?
That would be Mr. Trump.
Q nd who did you perform that work with with inflating the assets for 2013?
llen Weisselberg.
Q Similar to the work you performed in 2012?
Yes, it was an annual recurring process.
Q pproximately how long in 2013 would that take to go from being assigned adding the value to the time you brought it to Mr. Trump for his approval?
gain, several days.
Q ny understanding whether or not Mr. Trump did approve of the asset values you added to the Statement of Financial Condition for that year?
In the same way as previously described.
Q nd if I asked you the same questions for the following year, for 2014 --
Yes.
Q -- would your answers be any different?

No.
Q How about in 2015; would your answers be any different?
No.
Q nd let's just take a quick look at the 2013 Statement of Financial Condition which is -- Tommy, I'm so sorry. 707. Do you recognize that document there?
I do.
Q Let's turn to the third page. Do you recognize that asset page?
I do.
Q nd that was the asset page you worked on to increase the values for the 2014 Statement of Financial Condition?
Correct.
Q nd turning to the next page, do you see that net worth entry there?
Yes.
Q Is that the net worth line that you were tasked with reverse engineering higher by Mr. Trump?
Yes.
MS. F HERTY: Can we pull out 2015, which is we are looking at 730. Sorry, Tommy. 729. Thank you. Can you pull out 730, too.
Q So I put 2014 -- let's look at 2014 first which is 730 in front of you. Do you recognize that document?
I do.

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Q That's the 2014 Statement of Financial Condition?
Yes.
Q nd turn to page three of this document. gain, this is the assets page that you and Mr. Weisselberg worked on together?
Correct.
Q nd then turning to the next page, that net worth line appears to have gone up from prior year, yes?
Correct.
Q That was the net worth number that Mr. Trump assigned you to inflate back into?
Correct.
Q nd then turning to Exhibit 729, you recognize that document there?
I do.
Q Same assets page that you were assigned?
Yes.
Q Turning to the following page, net worth number there now six million. You see that there?
Yes.
Q nd that was a net worth number you were tasked with backing into to make higher pursuant to Mr. Trump's direction?
Correct.
Q You can put those down. Thank you.
Do you recall when you stopped working on the

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Statements of Financial Condition?
I believe around for the 2016.
Q What is your understanding as to why you stopped working on the Statement of Financial Condition values?
I was busy doing other things.
Q Were you ever in possession of one of Mr. Donald J. Trump's Statement of Financial Condition in final form?
Yes.
Q That was yours to use for business purposes?
It was given to me to use for business purpose.
Q nd when would you use that Statement of Financial Condition? Can you provide me an example?
So in 2013, there was a journalist for a New York centric magazine called The Real Deal. The journalist's name was Katherine Clarke and Katherine Clarke was going to do a story, a feature story on Mr. Trump's net worth. nd so when she came to see me at the office, I presented her with the document. She could not keep it. She could take notes in order to create the story about how much Mr. Trump was actually worth.
Q So is that generally how you would come to use the Statement of Financial Condition?
That's one example.
Q That's one example. nother example, do you have any?
When Mr. Trump was interested in putting in a bid for the Buffalo Bills, we used that statement in order to

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demonstrate his ability to purchase the team.
Q nd did you have the permission of Mr. Trump to be able to use the Statement of Financial Condition?
Yes.
Q Were you directed by Mr. Trump to use the Statement of Financial Condition to flout his wealth?
Yes.
Q I want to turn your attention to insurance. Did you work on the insurance program for the Trump Organization?
I did.
Q Did you work with others on the -- at the Trump Organization on the insurance program?
Yes.
Q Who did you work with at the Trump Organization?
llen Weisselberg, CFO; Matthew Calamari, Sr., chief operating officer; and Ronald Lieberman.
Q Did that group of four individuals have a specific title or association that they were known by?
The gang of four.
Q Did you say, "the gang of four"?
Some called it the group of four or the gang of four.
Q nd how did you know Matthew Calamari, Ron Lieberman, llen Weisselberg come to be known as the gang of four?
I believe Pam Newman from on came up with the name.
Q nd can you remind me who on is?

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on is the broker that handled the insurance for the Trump Organization for all the insurance.
Q So a broker, they go out and find insurance programs to present to the organization?
Correct.
Q They didn't provide the actual insurance, right?
No, they're brokers.
Q You said the name was Pam Newman?
Correct.
Q Who assigned you and those three other individuals, Mr. Weisselberg, Mr. Calamari, Mr. Lieberman, to work on the insurance program?
ll final decisions were done by Mr. Trump.
Q Mr. Cohen, I'm handing you an exhibit. We marked for identification as PX-3119. I'll give you a minute to take a look at that document. I also put it on the screen. Do you see that document in front of you, sir?
I do. Can I have just one moment to look through it?
Q Yes. bsolutely.
Thank you.
(Witness reviewing document.)
Okay.
Q So drawing your attention to the top of this e-mail, do you recognize the name Martha Blackman or martha.blackman@aon.com?

Yes.
Q Who do you recognize that name to you?
She worked for Pamela Newman at on.
Q Is that acknowledged in the following line on behalf of Pamela Newman right below?
Yes.
Q This appears to be an e-mail sent on February 14, 2013 addressed to llen Weisselberg at the Trump Organization, Matthew Calamari, Ron Lieberman and you. That's your e-mail address, mcohen@trumporg.com?
It was.
Q Thank you for the clarification. The cc line, do you recognize generally that those are e-mail addresses associated with employees at on, the insurance broker?
Yes.
Q The subject is, "Forward, the Trump/ on team-suggested work style going forward (draft memo number 4 with updated timeline)" and then there's an attachment. Do you see that?
I do.
Q Drawing your attention to the body of the message, it says, "Gentlemen, on is committed to delivering to the Trump Organization the best service and the best results." Then it states, "Work style- , team of four."
Is that a reference to what you were just describing a moment ago, the gang of four who worked on the insurance

program?
Yes.
MS. F HERTY: Your Honor, I move to admit this into evidence.
MS. H BB : Objection. Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3119.)
MS. F HERTY: Thank you.
Q So this paragraph under, " team of four" states, " on is excited that the Trump Organization has created a team of four to review the Trump Organization's insurance program, insurance policy buying decisions, claims management and risk protection protocols."
Is this an accurate description that it was the Trump Organization that created the "team of four" or "gang of four" as you referred to it just a moment ago?
Yes.
Q nd then it states that the "team of four and each member's role is outlined below." Do you see the box in the middle of the page there?
I do.
Q First it identifies llen Weisselberg, he was the executive vice-president and CFO of the Trump Organization, yes?
Correct.

Q What does it mean that his role was coverage buying decisions?
Ultimately, he would be the one to take the premium after we negotiated and that would be again Matt Calamari, Ron Lieberman, myself and llen to Mr. Trump in order to bind the policies.
Q Was he in charge of financial information with regards to the insurance program as well?
Yes.
Q Was he in charge of sharing financial information with regards to the insurance program?
To whom?
Q Sharing financial information.
But share it with whom?
Q We'll come back to that question.
Okay.
Q nd next is Matthew Calamari, the executive vice-president and chief operating officer of the Trump Organization, yes?
Yes, ma'am.
Q What is your understanding of his role with property claims?
So Matthew Calamari, Sr. handled all of the claims as it related to anything that dealt with the insurance. If there was an auto accident, he would handle it. If there was a

Workers' Compensation claim, he would handle it. If there was a loss, an insurance loss, he would handle it.
Q He was responsible for those aspects of the insurance program, right?
Yes, ma'am.
Q nd then Mr. Lieberman, he's next in the line, executive vice-president management and development, what is your understanding of his role as described here in this box?
During the process, things that would be looked at, of course, as casualty risk, again claims and also coverage buying decisions in terms of what needed, what didn't -- his background is he came from the City Parks Department and so he had a good understanding of casualty risk.
Q nd then you're the fourth person in this box, yes?
Correct.
Q nd what does that mean, "coverage terms and conditions" associated with your role?
It sort of encompasses the other boxes whereby we needed to make sure that the coverage terms were advantageous to the Trump Organization and the conditions of the insurance properly insured the assets.
(Continued on the next page.)

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Q You can put that to the side. Thank you.
re you aware if the Statement of Financial Condition, we talked a little bit about it, whether the statements of financial condition were ever presented during any of the gang-of-four meetings with underwriters?
Yes.
Q What is your understanding as to when the Statement of Financial Condition would be shared in these gang-of-four meetings with underwriters?
Pamela Newman would set up a meeting that would include various different insurance company executives and we would meet in one of the conference rooms across the table from one another and llen would provide each and every one of them with a copy -- a bound copy of the Statement of Financial Condition.
Once again, they were told that they can copy, they can take notes off of it, but they cannot keep the original document.
Q So insurance underwriters were provided the statements of financial condition by llen Weisselberg, yes?
Yes, that was the word I was looking for, underwriter.
Q nd those underwriters were permitted to review those statements, yes?
Encouraged to.
Q nd take notes?
Yes.

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Q On the information contained in those statements; is that correct?
That's correct.
Q I'd like to show you another document.
MS. F HERTY: Your Honor, I'm handing up to the witness a document we've marked as Plaintiff's Exhibit PX-588.
Q nd I'll represent to you, Mr. Cohen, this is the way this document was provided to us. It's four pages, but I think the first two pages are identical to the second two pages, so if you want to take a moment to review, I'll just focus your attention on those first two pages, please.
Okay. Do you see this document in front of you? It's on a letterhead " ON," right? You see that in the upper right hand corner?
Correct.
Q nd there is a heading, " genda, "The Trump Organization LLC D&O Underwriting Meeting," dated Tuesday, January 10, 2017, 10:00 a.m. and 11:00 a.m..
nd is that the address of the Trump Organization, 725 Fifth venue?
It is.
Q nd then there is a -- in the center of the page, a header " ttendees." Do you see that there?
Yes.

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Q nd under the heading "Trump Organization," is that your name listed there?
It is.
Q nd the other names llen Weisselberg, Matthew Calamari, Ron Leiberman. That's the gang of four, yes?
Correct, the group of four.
Q Group of four.
nd then George Sorial, he's an employee of the Trump Organization?
He is.
Q How about dam Rosen?
Yes.
Q nd what about Patrick Birney?
Yes.
Q nd there is another subheading, " ON." Do you see that there?
I do.
Q Pam Newman, that's who we've been speaking about?
Yes.
Q She was the broker?
Yes.
Q nd Regina Degnan, do you recognize that name?
I do.
Q Who is Regina Degnan?
She was Pamela's executive vice president. Ultimately

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took her book of business when Pam retired.
Q nd fair to say Pam Newman was the relationship partner at ON?
Yes.
Q nd Regina then succeeded her as the relationship partner for the Trump Organization's relationship program?
Correct.
Q Do you recognize the name John Vanasco?
I do.
Q How do you recognize that name?
From the meetings.
Q Okay. nd what about Michael Fetchko. Do you recognize that name?
I don't.
Q ny reason to doubt that Mr. Fetchko was an employee of ON?
No.
Q Okay. nd then under that subheading there is another subheading, "markets." Do you have an understanding of the markets?
They're talking about the various different insurance markets because the Trump Organization is comprised of many different assets and many different classes.
Q So is this is an example of an agenda for Trump Organization D&O Underwriting Meeting that occurred at the Trump

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Organization on Tuesday, January 10, 2017?
Yes.
Q Okay.
MS. F HERTY: Your Honor, I move to admit this into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 588 in evidence.)
Q Do you have a specific recollection of recalling this underwriting meeting, Mr. Cohen?
No, ma'am.
Q ny reason to doubt that you didn't have an underwrite -- D&O underwriting meeting on Tuesday, January 10, 2017?
No.
Q Involving Everett?
No.
Q Or HCC?
No.
Q Okay. nd just drawing your attention to the second page of this agenda. Looking in the middle of this "questions, discussions, topics agenda," do you see in the middle of the page there is a subtopic "financial?"
I do.
Q Is this a reference to the conversation we were having

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a short while ago that underwriters would add as part of the agenda wanting to see financials in connection with quoting premiums for the Trump insurance program?
Yes.
Q Okay.
MS. F HERTY: We can put that to the side. Thank you.
Q nd was Mr. Trump ever involved in these group of four insurance meetings?
Yes.
Q Describe that for me.
In two different ways: First way, would be on rare occasion we would go to his office to discuss an insurance issue, but for the most part about three quarters of the way through the meeting Mr. Trump would then come in and there would be a conversation about his extensive net worth, he's actually richer than the insurance companies, "maybe we should go self insured. We got to get a good premium."
Q nd would Mr. Trump ever appear at these meetings talking about his net worth to the underwriters themselves?
Yes. That's what I was referring to three quarters through the meeting he would generally show up.
Q nd would you coordinate these gang-of-four meetings such that Mr. Trump could arrange to arrive like that?
It was coordinated that he would arrive like that.

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MS. F HERTY: Can we do 3166?
I'm going to ask Tommy to pull Exhibit 3166.
Tommy, my mistake. You don't have it.
Your Honor, I've marked for identification plaintiff's PX 3166. I've handed it up to the witness.
Q Mr. Cohen, I'll give you a moment to review that document and let me know when you're ready.
MR. KISE: Your Honor, just briefly, what was the last exhibit number? Was that in evidence, the one right before this? What was the last exhibit? I'm sorry.
MS. F HERTY: 588.
MR. KISE: 588, okay. Thank you.
MS. F HERTY: nd that was already in.
MR. KISE: It was already in, right.
MS. F HERTY: Your Honor, I move to admit Plaintiff's Exhibit 588.
THE COURT: Was it already in or wasn't it?
MS. F HERTY: pparently it wasn't already in. I misunderstood.
THE COURT: It's now admitted into evidence.
MS. F HERTY: Thank you, Your Honor. I appreciate it.
MR. KISE: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 588 in

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evidence.)
THE COURT: The witness just going to take a little motion break I'll call it. Says it will be a minute.
THE COURT OFFICER: Witness returning. Come to order.
THE WITNESS: Thank you, Your Honor.
THE COURT: You're welcome. Let's continue.
MS. F HERTY: Thank you.
THE WITNESS: pologies.
Q It's okay.
Did you have a moment to review the document in front of you, Mr. Cohen?
I did.
Q nd looking at the top of this e-mail, it is from SariRudman@ ON.com.
Do you have any understanding as to who Sari Rudman is?
Yes.
Q Who is that?
She also worked for Pam Newman at ON.
Q nd this is an e-mail sent on March 19, 2013. gain, it's sent to the group of four, yes?
Correct.
Q nd there is a copy here to an individual named Rhona Graff. Do you recognize that name?
I do.

Q Who is Rhona Graff?
Mr. Trump's executive assistant.
Q Okay. How about the e-mail address HLorenzo@Trumporg.com?
That would be Holly Lorenzo.
Q Do you have any understanding as to who Ms. Lorenzo is?
Yes.
Q Who is that?
That's one of Mr. Trump's assistants. She was the assistant for the executive assistant.
Q She was an assistant for Ms. Graff?
Yes.
Q Thank you for the clarification.
nd Ms. Newman? We spoke about her, yes?
Correct.
Q Okay. nd the subject of this e-mail is a forward "Property casualty marketing meetings re: 2013 renewal-Tuesday, pril 9, 2013 at 3:00 p.m.-at The Trump Organization," yes?
That's what it says, yes.
Q nd in the body of this message, it says:
"Dear, gentlemen. Please note in your calendar Rhona has kindly secured Mr. Trump's availability for Tuesday, pril 9, 2013 at 3:00 p.m. at the Trump Organization, 25th floor. We will provide a list of all attendees in an agenda and meeting purpose. Best, Pamela." Do you see that there?

I do.
Q Is this the matter in which you will confirm Mr. Trump's attendance at these insurance group of four meetings?
No.
Q Tell me what this.
This was obviously Pam Newman's acknowledgement Mr. Trump was going to appear, but we didn't need even this letter to have already discussed that he would make the appearance three quarters of the way through the meeting.
Q But this is an example that Mr. Trump did in fact have it scheduled to appear for a Trump underwriting meeting, yes?
Yes.
MR. KISE: Objection. Leading.
THE COURT: Sustained.
Q No reason to dispute that this is the -- this e-mail identifies Mr. Trump's attendance of the Trump Organization meeting?
MS. H BB : That was leading. Objection.
THE COURT: Could you read that back?
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
THE COURT: Overruled.
MS. F HERTY: You can put that down.
nd Your Honor, I actually move to admit this into

evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3166 in evidence.)
MR. KISE: Statute of limitations, Your Honor.
THE COURT: Overruled. Did we get an answer? I'll ask Ms. Faherty. Did he answer all your questions?
MS. F HERTY: He answered my question.
THE COURT: No reason to dispute etc., etc.
THE WITNESS: nd my answer was no.
THE COURT: No, okay.
MS. F HERTY: Thank you, Your Honor.
THE COURT: Sure.
Q Mr. Cohen, I want to turn your attention to the Buffalo Bills. You made mention of it earlier, okay?
Correct.
Q ll right. Do you recall who was involved in that process with you from the Trump Organization?
Mr. Trump, llen Weisselberg and myself.
Q nyone else? How about Jason Greenblatt?
Yes, Jason Greenblatt.
Q What about Ivanka Trump?
Not that I recall.
Q Okay. Did you work with Deutsche Bank on the process?

MR. KISE: Objection. What process?
Q We turned our attention to the Buffalo Bills.
So what, if anything, do you recall about Deutsche Bank's involvement in the attempt to purchase the Buffalo Bills?
We had had a meeting in Mr. Trump's office with members of Deutsche Bank's team for the purpose of securing a loan that would be predicated off of his assets so that we could acquire the -- or at least put in a bid to acquire the Buffalo Bills.
There is an interesting NFL scenario where you cannot have more than ten percent of an NFL team financed --
MR. KISE: Objection. Move to strike the last portion of that answer, Your Honor, unless Mr. Cohen is now an expert on NFL acquisitions.
I mean, I represented, George Steinbrenner in 1995 in connection with the Tampa Bay Buccaneers purchase, but I'm not an expert on that. I'm not sure if Mr. Cohen is an expert on NFL acquisitions, but the last port portion of his nonresponsive.
THE COURT: If it was nonresponsive that would be my objection.
Sustained on the ground of nonresponsive, the last part of it, the ten percent rule.
MS. F HERTY: Understood.
Q Let's look at some documents. Maybe that will help the conversation.

Sure.
MS. F HERTY: Your Honor, I've marked as plaintiff's next exhibit PX 3159.
Q Drawing your attention, Mr. Cohen, to the document on your screen. Do you see that this is a message from ITrump@Trumporg.com. Who do you understand that e-mail address to be?
That's Ivanka Trump's e-mail address.
Q nd this e-mail is dated July 27, 2013 at 3:30 p.m., yes?
Correct.
Q It's addressed to Jason Greenblatt?
It is.
Q llen Weisselberg?
Yes.
Q nd you?
Yes.
Q This appears to be a forward with an attachment and the attachment is titled, "DB to Morgan Stanley letter, (clean version 2) 72514 [1].docx." Do you see that there?
I do.
Q nd the underlying message is a forward from Ivanka Trump to Rosemary Vrablic dated July 26, 2014. Do you see that there?
I do.

Q Do you have any understanding as to whom Rosemary Vrablic is?
She is an employee at Deutsche Bank.
Q nd what, if any, title did Ms. Vrablic have at Deutsche Bank as it concerned the Trump Organization?
She was -- well, she is an executive at Deutsche Bank, but she has a long history with Mr. Trump.
Q Was she a relationship partner at Deutsche Bank to your understanding?
Yes.
Q Okay. nd in Ms. Trump's message that she forwarded to you and others, it states: "Hi, Rosemary. Thank you for providing this draft confidence letter."
What is your understanding of a draft confidence letter?
It was needed in order to get the process started.
Q nd what process are you referring to?
The process of putting in a bid to obtain the Buffalo Bills.
THE COURT: Five-minute warning.
MS. F HERTY: Yes, Your Honor.
Q nd the message continues: "I have inserted a couple of comments and suggestions. Please see what you can do. I will call you in the a.m. to discuss." Do you see that there?
I do.

Q nd in drawing your attention to the following page of this document, the very top says, "Draft (DB letterhead)."
Do you see that there?
I do.
Q Dated "July blank, 2014," yes?
Correct.
Q nd it appears that there is an addressee, Morgan Stanley. Do you have any understanding as to why Morgan Stanley is listed there?
Morgan Stanley was handling the sale.
Q Of the Buffalo Bills?
Of the Buffalo Bills.
Q Okay. nd the address is blank, the attention is blank, yes?
Correct.
Q But it states "re: Mr. Donald Trump," yes?
Correct.
Q nd there is some language in the center here.
MS. F HERTY: We can zoom out a little bit so we can put the full letter up.
Q Okay. nd there is a second page to this letter. Do you see in the capital -- all caps at the top of the second page it states, "Can you not replace the whole following paragraph with the below statement. It says the same thing without this overkill belt" and it states "supenders" [sic]. I think that's

supposed to be "suspenders" --
THE COURT: I'm sure it is.
Q Language. Do you see that there?
I do.
Q Do you recall including language like this as an edit to a Deutsche Bank financial wherewithal letter?
No.
MR. KISE: Objection.
Q ny reason to dispute that you received this forward from Ivanka Trump that included her edits to a letter to Deutsche Bank?
Well, her requested edits to the letter and yes, it came to my e-mail address.
MS. F HERTY: Your Honor, I move to admit this into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3159 in evidence.)
MR. KISE: Your Honor, not only is it statute of limitations. I'm just wondering -- I object on relevance grounds. What does this have to do with anyone in the case? Ms. Trump is no longer a party to the case and this transaction as far as I know it doesn't form the basis for any cause of action that's in the complaint at all, so I'm

not sure why we're talking about the Buffalo Bills other than it does generate some press interest. I'm sure this is the Buffalo Bills.

THE COURT: You know, I think Mr. Cohen referred to Buffalo Bills many times and I'm thinking that's the football team, right? Without saying the football team. What's the relevance?

MS. F HERTY: Your Honor, they're writing to Deutsche Bank to get financing, they're providing comfort to the bank to get financing, they're making financial representations connection with the purchase of the Buffalo Bills. It is an aspect of our complaint and the ttorney General intends to prove the allegations within our complaint. So this is square within the case that we have brought. It is a continued pattern of fraud.

MR. KISE: There is no transaction at all associated with it. Nothing ever happened and it's not -- it doesn't form the basis for any of the counts.

The counts are connected to loan transactions that were actually consummated loan transactions and insurance transactions and insurance policies. This is just simply a free-for-all on anything that everyone went out at anytime and place and where -- and Ms. Trump who sent this e-mail is no longer a party to the case. So not only is it outside the statute of limitations, but it just simply has nothing

to do with the claims asserted in the complaint.

I realize there is 200-something pages and 800-something paragraphs and one of those paragraphs makes some drive by mention of the Buffalo Bills. I do realize that, but that doesn't make it relevant in this trial proceeding now that the issues have been narrowed and the case has been joined.

THE COURT: I think we can all agree that Mr. Trump never owned the Buffalo Bills; right?

MS. F HERTY: We can agree that that did not come to fruition, Your Honor, yes.

THE COURT: Nevertheless, I will admit it as possible evidence of pattern and practice of the organization back at that time generally speaking and the witness himself was on this. If it's not relevant, it's not relevant, but I think it is anyway, so.

MS. F HERTY: Your Honor, it might be a good moment for a break.

THE COURT: Did we get an answer to the last question?

MS. F HERTY: I thought we did.

MR. SOLOMON: Yes.

THE COURT: ll right. Ten-minute break. We'll see you in 15 minutes.

(Whereupon, there is a recess in the proceedings.)

Transcript continues on the following page....

THE OFFICER: Come to order. Part 37 is back in session. Please be seated and come to order.

THE COURT OFFICER: Witness entering.

(Witness resumes the stand.)

THE COURT: Okay. Please proceed.

MS F HERTY: Thank you, Your Honor. I'd like to hand up to the witness a document that I've marked for identification as PX-3276.

Q Mr. Cohen, I ask you to take a minute and look at the document in front of you and then I'll ask you a question.

(Witness reviewing document.)

Q Mr. Cohen, this document is an e-mail from Jason Greenblatt to you, Ivanka Trump and llen Weisselberg, yes?

Correct.

Q Dated July 29, 2014?

Correct.

Q With the subject "executed Buffalo Bills bid-related documents," yes?

Yes.

Q nd then there appear to be a series of attachments in included with this document?

Correct.

Q nd Mr. Greenblatt's message says, " ll, FYI, attached are copies of the documents executed today in connection with the bid made by DJT." Do you have any understanding as to who

DJT is?
Donald J. Trump.
Q "For the Buffalo Bills." He then goes on to state, "Items 1, 2, 3 were submitted to Morgan Stanley. Items 4-5 are documents between Trump and DB." ny understanding as to who DB is?
Deutsche Bank.
Q "(nd were not submitted to Morgan Stanley)." Do you see that there?
I do.
Q nd item number one appears to be a letter from DJT. Donald J. Trump, yes?
That's what it says, yes.
Q To Morgan Stanley?
Yes.
Q Then two is "owner background form," correct?
Correct.
Q nd three is a letter from Deutsche Bank to Morgan Stanley, yes?
Yes.
Q nd those were the three items submitted to Morgan Stanley?
Correct.
Q nd then four and five, number four is a certification of the financial position of DJT or Donald J. Trump, yes?

Yes.
Q Executed by J. McConney. Do you understand who J. McConney is?
Yes.
Q Who is that?
Jeffrey McConney.
Q Item five is an executed letter from Deutsche Bank to Donald J. Trump, "Re: No waiver of Deutsche Bank/Trump loan terms," yes?
Yes.
Q nd do you recall putting documents together in connection with the Buffalo Bills bid?
I remember seeing these documents.
Q nd this was something that you worked on when you were at the Trump Organization, yes?
Correct.
Q Turning your attention to the first attachment then, I'll ask you to turn the page of this exhibit. This appears to be a Trump Organization letterhead, yes?
That's correct.
Q nd this letter is dated July 29, 2014, yes?
Yes.
Q Do you recall the name K. Don Cornwell?
I recall the name.
Q Who do you understand K. Don Cornwell to be?

Managing director of Morgan Stanley. He was the individual that was compiling all the bids on behalf of the Buffalo Bills.
Q nd so this is a letter -- and if we could just pull back and turn to the second page of this letter. Do you recognize the signature on this letter addressed to K. Don Cornwell dated July 29, 2014?
Yes.
Q Whose signature do you recognize that to be?
Donald J. Trump.
Q nd there's a title underneath the word "sincerely." It is "Trump cquisition, LLC." Do you see that there?
I do.
Q The letterhead of this letter, however, is the Trump Organization. What is the connection between the Trump Organization and Trump cquisition, LLC?
It is a subsidiary for new acquisitions. They would do it under its own specific LLC.
Q Was it still an entity contained under the umbrella of the Trump Organization to your understanding?
To my understanding, yes.
Q nd you stated that's Donald J. Trump's signature, yes?
Yes.
Q Now, turning back to the first letter, first page of the letter, the first paragraph states, "Please let this letter

serve to represent my bid to purchase the Buffalo Bills football team for $1 billion."
Do you recall the bid made to purchase the Buffalo Bills for $1 billion in 2014?
$1 billion, yes.
Q Turning to the next paragraph, the letter continues, "I have a net worth in excess of $8 billion (financial statements to be provided upon request), comprised of substantial cash balances, highly liquid assets (including Class real estate) and very little debt." Do you recall seeing that?
I do.
Q Do you recall a representation made by Mr. Trump in connection with his bid to buy the Bills asserting a net worth in excess of $8 billion?
MR. KISE: Objection. In addition to this document or this document?
THE COURT: I think that's a fair question. So let's make the question more specific. By fair question, I meant Mr. Kise's question.
Q Do you recall Mr. Trump, separate and apart from this letter, making a representation that he had a net worth in excess of $8 billion in connection with his attempt to purchase the bills?
Yes.
Q nd that is reflected here in this letter, yes?

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Yes.
Q nd then this letter also states in the following paragraph, "I'm enclosing a letter from Deutsche Bank which indicates my financial strengths, both from a liquidity and asset value standpoint, and confirming that I have the financial capability to consummate the transaction, yes?
That's what it says.
Q nd this was submitted to Mr. Don Cornwell at Morgan Stanley in connection with the Buffalo Bills bid, yes?
Yes.
Q nd then I'll draw your attention to -- we'll skip the background form which is the second attachment to this letter. So let's go to the third document that was attached to this letter and submitted to Morgan Stanley. Go to page 17 of 22.
nd this is a letter from Rosemary Vrablic, managing director at Deutsche Bank. That was the relationship partner we spoke about before, yes?
Correct.
Q Dated July 29, 2014?
Yes.
Q lso addressed to Mr. Cornwell at Morgan Stanley?
Yes.
Q Drawing your attention to the first paragraph, do you recall that Deutsche Bank submitted a letter stating that they have been asked by Mr. Donald J. Trump to provide this letter in

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connection with his bid for the acquisition of the Buffalo Bills of the National Football League (the transaction)?
Yes.
Q nd drawing your attention to the third paragraph, the letter reads, "Our understanding is that Mr. Donald J. Trump has made, or intends to make a bid for the Buffalo Bills in the amount of $1 billion in the aggregate. Based on our preliminary review of the current financial information of Mr. Donald J. Trump made available to us, including liquidity and asset value, it is our assessment that Mr. Donald J. Trump would have the financial wherewithal to fund his bid." Do you see that there?
I see that.
Q What, if anything, do you understand Deutsche Bank to have reviewed to make this statement, "Based" on our preliminary review of current financial information of Mr. Donald J. Trump made available to us"?
The Statement of Financial Condition.
Q nd if we turn the page, you'll see that this document is signed. Does that appear to be the signature of Rosemary Vrablic of Deutsche Bank?
I don't know her signature, but yes, it says Rosemary T. Vrablic.
Q No reason to doubt that that's her signature, right?
No.
Q There is a copy here. Is that for Mr. Donald J. Trump?

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Correct.
Q You will recall that Mr. Greenblatt's cover e-mail suggested that there are two other documents attached that were just transmitted to Deutsche Bank, right?
Correct.
Q Turning your attention to the next page of this document, do you recognize the signature on the bottom of this page titled, "Certification of the Financial Position of Donald J. Trump "?
Yes.
Q Whose signature do you recognize that to be?
That's Jeff McConney.
Q The Jeffrey McConney that we spoke about before? He worked in the accounting department at the Trump Organization?
Yes, the controller.
Q The controller?
Yes.
Q nd if you see in that very first paragraph, it states, "I, Jeffrey McConney, controller;" is that right?
That's correct.
Q nd there are certain numbers included in here that "DT's current liquidity is approximately 310 million." Do you have an understanding as to who DT is?
Donald Trump.
Q nd then it states in paragraph B, "There has been no

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material decrease (in excess of 10%) in the aggregate value of his illiquid assets since the financials were reported to Deutsche Bank as of June 30, 2013 that were certified by DT, Donald Trump, on October 30, 2013," yes?
That's what it says.
Q nd those financials, do you have any understanding as to what those financials as of June 30, 2013 are?
The assets described in the Statement of Financial Condition.
MS. F HERTY: Your Honor, I move to admit this document and the exhibits into evidence.
MR. KISE: Your Honor, I'm not sure where to begin, but I'll start with statute of limitations.
THE COURT: Overruled.
MR. KISE: I know where you are going on that, but again, I'm not sure of the relevance of any of these documents to the proceeding. I mean, is it the government's intention to establish that President Trump did not have the financial capability to consummate the transaction? Unless they are going to connect this up somehow with some actual alleged fraudulent activity, there's no -- there's no transaction that was ever consummated.
nd in order to demonstrate that there's anything false or fraudulent here about this, we have to go into an entire, which we can, I guess if we are going to be here

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until next March, an entire analysis whether he had the financial capability to consummate the transaction. The documents are all hearsay, so I'm wondering what purpose they're being offered for. What are we proving? What relevance, what fact at issue that is material to the issues before the Court is being established by this because on its face, there's nothing to indicate that President Trump didn't have the financial ability to consummate the transaction and Deutsche Bank says itself based on their own assessment, they say that he did.

So are we going to go down this path? This is the danger of these hypothetical transactions that never took place and they need to be more connected to some actual cause of action.

THE COURT: Jeffrey McConney, who I believe the witness has testified, signed the letter, submitted the certification. He is a defendant, right?

MR. KISE: He is.

THE COURT: nd whether everything in this document is accurate or not, I think is a factual issue.

MR. KISE: Well, but if it is a factual issue, then we have to go through whole society of facts and whether he had the financial ability to consummate the transaction. It doesn't just come in because it is a statement and then the government gets to assume that there is some falsity here.

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They are going to have to establish all of that which is why it needs to be connected to some actual cause of action.

THE COURT: Do you plan to establish all that?

MS. F HERTY: We do, Your Honor. I think that the evidence has come in that it has established a significant number of the facts relevant to the evidence we're putting forward. I am concerned that there is an unnecessary objection here. He's given testimony about this transaction. We're seeing information about financials that are being proffered in order to receive the benefit.

This is our case. Because the fraud was not fully perpetrated does not mean it is not relevant to the allegations brought by the ttorney General. This is a pattern and practice. There are co-defendants here. There is a plethora of reasons why this evidence comes in, Your Honor, respectfully.

MR. KISE: Your Honor, the entirety of Ms. Faherty's presentation presumes the ultimate question. I'm back to my point that they're presuming that there is some fraudulent activity here without actually establishing that he did not have the financial capability to consummate the transaction.

THE COURT: But that isn't the only statement inherent in this document.

MR. KISE: But it is because they're all connected

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to that point. I mean, you can't just say that. re we going to debate whether his current liquidity was 310 million in 2014? I think it has already been established. If this one piece they're focusing on right now, that's up on the screen, but it is all part of one exhibit that relates to no transaction that was ever consummated. There's no connectivity to anything that's at issue.

It doesn't go to the element without establishing that he did not, in fact, have the financial capability to consummate the transaction which I would disagree with Ms. Faherty. That has not been established. We don't know that. I mean, there is certainly no evidence that would indicate that he did or did not. I mean, with the evidence that is before the Court as to this transaction, it certainly seems sufficient that he had the financial wherewithal to buy more than one NFL team. I mean, at the time. That's what I'm saying.

re we going to go down this path of debating whether or not there is a truth or falsity here on an issue that doesn't relate to the actual claims and causes of action that are being presented? This is tangential and remote and unless -- Ms. Faherty just admitted she does not plan to connect this up. She's simply saying that the fraud has already been established, that it is already established, that this document is evidence itself of fraud

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and I don't see how, how this exhibit is evidence of fraud. He had the financial capability to consummate the transaction and, again, perhaps more than one, maybe two or three. You can't own more than one NFL team as far as I know.

THE COURT: re you testifying as an expert to the NFL?

MR. KISE: I am more of an expert on --

THE WITNESS: You can't own more than one.

THE COURT: s part of this document, I only have the one sheet in front of me now. Wasn't there a statement, a claim that the defendant's net worth was $8 billion?

MR. KISE: Yes. Has that been disproved?

THE COURT: Well, we don't have to disprove it. We are in the middle of a trial at this point.

Do you agree that his net worth was $8 billion at that time?

MS. F HERTY: No.

THE COURT: re you going to try to prove that it wasn't or do you feel you've already proved it wasn't?

MS. F HERTY: For one, Your Honor, the inherent falsity of a Statement of Financial Condition has already been decided by this Court on summary judgment. Those have been determined to be false. I don't think I need to prove up or prove down. lthough, there is evidence as to the

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inherent falsities and values contained in that Statement of Financial Condition that we have put in evidence in this trial and will continue to do so. So yes, we are continuing to prove our case, Your Honor, and connect all of those dots.

MR. KISE: But this document is not the Statement of Financial Condition, this document, and I would disagree strongly with Ms. Faherty. I mean, if we are in a place now where the statements are irretrievably proven false, then without a jury, without a trial and now we are going to be here and we're not -- why are we even putting on a defense then if that's already been established? We might as well close it up now. It doesn't make any sense what Ms. Faherty is saying.

They have to establish the elements of their claims and they can't simply rely on the fact that well, it's established that it is false and, thereby, that establishes the remainder of their claims. nd here, we are not even talking about an actual claim. We're talking about a theoretical claim. It doesn't form the basis for any of the counts that are at issue in the trial. nd unless we're going to go down the path, unless the government intends to go down the path of proving up that President Trump, which I don't think they can do that, that President Trump did not have the financial capability to consummate this

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transaction, this document has no relevance at all.

THE COURT: Couple of things. It is a non-jury trial, of course. I tend to be somewhat liberal in what I let in. I believe that I am evenhanded about what I'm letting in and what I'm not letting in. I think it's arguably false, particularly, again, the $8 billion. I don't -- arguably, I don't know whether Mr. Trump did or didn't have the --

MR. KISE: But that's precisely the point, Your Honor.

THE COURT: Wait. Wait, please. Well, yeah, that's why we're having a trial. I think this tends -- again, arguably tends to show a pattern and practice of broad, to use a loaded term, so the objection is overruled. Let's just move on.

MR. KISE: gain, I'm starting to feel like Paul Newman at this point. Every objection is overruled. I mean, this evidence should not come in respectfully. It really shouldn't. There's no indication as to where that even 8 billion -- 8 billion includes brand value. There's so many issues here that again, we're going down this path of litigating something that isn't even relevant to the claims and causes of action before the Court.

THE COURT: One other thing. Maybe the only banned word in my courtroom is "again." You don't have to say

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things again. The objection is overruled for the reasons I already stated and the reasons that Ms. Faherty stated. It's duly noted that you strongly object. Let's move on.

MS. F HERTY: One more document, Your Honor.

Q Mr. Cohen, do you recall in connection with the attempt to purchase the Buffalo Bills that you attended a meeting in Detroit called a management presentation?

Yes.

Q Do you recall who was at that meeting in Detroit?

Myself, Mr. Trump, Jason Greenblatt, llen Weisselberg, and I don't recall if Ivanka was there.

MS. F HERTY: Your Honor, I handed up to the witness a document we've marked for identification as PX-981.

Q Take a quick look at that document, if you will, Mr. Cohen, and then I'll ask you a quick question.

(Witness reviewing document.)

Yes.

Q Just drawing your attention to the third page, there is an e-mail sent by you to lex Hill dated July 29, 2014 at 3:36 p.m. Do you see that message there?

I do.

Q nd do you recall who lex Hill (IBD) is?

I don't recall him specifically.

Q If I said the Morgan Stanley investment banking

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division, would that refresh your recollection as to what IBD stood for?

Yes. gain, I don't know him.

Q Do you have any understanding that Mr. Hill was an employee at Morgan Stanley?

Yes.

Q So fair to say that this e-mail is a reflection that you dropped off the bid packet for the Buffalo Bills, yes?

Correct.

Q nd then drawing your attention through the e-mail all the way to the top, this is just a continued e-mail thread, right?

Correct.

Q You remain on the e-mail chain in this thread, right?

Correct.

Q nd on ugust 4th, the second message on that first page, there's an e-mail from lex Hill to you and Jason Greenblatt with a copy to K. Don Cornwell, right?

Correct.

Q nd Mr. Hill says wanted to confirm if the 6th worked for the management presentation. Do you see that there?

I do.

Q nd then following up on the 6th, Mr. Hill writes to you again saying, "Michael, Jason, looking forward to meeting you all today. One near term NFL item we would like you to all

fill out and have Mr. Trump sign is the attached authorization and consent to release records. If you all could get that back to us home, that would be greatly appreciated. lso, we would like to offer you all the opportunity to tour the newly-modernized Ralph Wilson Stadium the week of the 18th. Please let us know if there is a day that works that week for a trip to Buffalo. Looking forward to meeting you."

Does this message reflect that a meeting occurred in Detroit on ugust 6th in connection with the Buffalo Bills bid package?

Yes.

MS. F HERTY: Your Honor, I have no further questions on this document and this witness. I would like to move that document into evidence, please.

MR. KISE: Same objections, Your Honor. Statute of limitations and relevance.

THE COURT: Same ruling. Granted. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 981.)

MS. F HERTY: I rest, Your Honor. Thank you.

THE COURT: Well, will there be any cross-examination?

CROSS-EX MIN TION BY

MS. H BB :

Q Hello, Mr. Cohen.

Hello, Ms. Habba.

Q How are you?

Well. Thank you.

Q We've met a few times, haven't we?

We have.

Q Do you want me to call you Mr. Cohen today or Michael? I know before, we've changed that up. What are you comfortable with?

I think Mr. Cohen for the day since we are here in court.

Q I'll be Ms. Habba for the day. So I'm going to ask you a series of questions today. Before I do, first of all, when I do ask you my series of questions and I pace, I move when I am on my feet, so I apologize. I am going to ask you questions that are going to be yes-or-no questions and I'm going to try to keep it that way other than when I ask you to read something, so that we can move this along and make sure we get through everything that's per the judge's instructions, but I will try to make the questions super clear, so we have no issues.

Before we start, I want to discuss your health. I'm not going to get into anything that's uncomfortable. I don't really do that, but I need to make sure that you are able to testify completely, clearly and understand what you're doing today.

Do you have any health issues particularly at this

moment that would cause you a reason to not be able to sit through the testimony under oath in this court today?

sked and answered.

Q I forgot that you like to do this. You did this with me in the depositions. Okay.

MR. KISE: The judge doesn't like that objection.

Q That's not good. So here is how this is going to go. They get to object. They get to object. We all get to do our thing. You get to answer my questions. The more we do that, this will go better. We are not in a deposition. That's the judge. Ready? Mr. Cohen --

THE COURT: Even if you were asked before by a different party particularly, just answer it. It will be quicker.

Q nswer the questions and we will be here until January. Okay.

Mr. Cohen, are you on any medication that would affect your ability to testify honestly to me today?

No.

Q No. Okay. Do you have any medication that would change your method of thinking at this moment, so that you're not clear in any sort of way?

No.

Q So you are fully prepared to testify to me today?

Yes.

Q Under oath?

Yes.

Q nd you understand what "under oath" means? Is that right, Mr. Cohen?

Yes.

(Continued on the next page.)

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Q Good. nd you've been deposed, even by me, many times before, haven't you, Mr. Cohen?
I have.
Q nd you've been in courts many times before, haven't you, Mr. Cohen?
I have.
Q Good. Let's go through that.
So previously you pled guilty to a number of felonies. Isn't that correct?
Yes.
Q nd today, alone, you testified that you pled guilty to five counts of evasion and assessment of income tax liability for 2012 to 2016 --
MS. H BB : I'm sorry is that not making a weird sound? Can you guys hear it?
Q In violation of 26 USC Section 7201; is that correct?
Correct.
Q nd you pled guilty to making false statements to a financial institution in connection with a credit decision in violation of 18 USC Subsection 1014; is that correct?
I take your word that the sections are correct.
Q No, no. I don't want you to take my word.
MS. H BB : Let's pull up Exhibit D 951.
Q Mr. Cohen, this document is an allocution dated ugust 21, 2018 for financial crimes. Do you see this?

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I do.
Q Do you see that it says "United States of merica versus Michael Cohen?"
I do.
Q Do you see that it's case 1:18-CR-00602-JMF?
I do.
Q It's filed on 9/14/18, that's 2018; is that correct?
Correct.
Q Okay. Do you recognize this document by the Honorable William H. Pauly, III?
I do.
Q Okay. Do you recognize it as your allocution?
Not from this appearance page, no.
Q Okay. Well, let's go through this.
So, if you go to --
MS. H BB : Peter, have him pull up the next page, please. No, I'm going to go to -- one second.
Q Let me ask you this: You were a lawyer at one point; right?
I was.
Q Okay. nd do you know what a docket number is?
I do.
Q nd does this have a docket number, this document that I showed you, that I read it before?
Yes.

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Q Yes, okay.
So that means it's a publicly filed court document; right?
Correct.
Q Okay. So do you see in line 19 here, I'm going to read this to you, Mr. Cohen:
"How do you now plead to the charge in Count 1 of evasion of personal income tax for the calendar year 2012." nd the judge asked you, "do you plead guilty or not guilty?" Do you see that?
I do.
Q nd what was your answer, Mr. Cohen?
"Guilty, Your Honor."
Q Correct.
nd the Court said:
" nd how do you plead to the charge in Count 2 of the Information of evasion of personal income tax for the year 2013, guilty or not guilty?" nd what did you say?
"Guilty, Your Honor."
Q Thank you.
So let's move on to the next one. This is all from the same allocution that I'm showing you.
Did you plead guilty to causing an unlawful corporate contribution in violation of 52 USC Subsection 30118 and --
THE COURT REPORTER: I'm sorry, Ms. Habba.

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MS. H BB : Sure.
Q You pled guilty to causing an unlawful corporate contribution in violation of 52 USC Subsection 30118 ( ), that's and 30109 (D)(1) ( ) and 18 USC Section 2 (B); is that correct?
I don't see where you're reading that from.
Q No problem.
Can you provide me --
Q I'm actually not reading it. I'm just asking, but we can confirm it.
MS. H BB : Can you please pull it up?
Q I'm going to read from what they pulled up from your allocution, which we identified before.
"How do you plead to the charge in Count 3 of evasion of personal income tax for the year 2014, guilty or not guilty?"
What did you respond, Mr. Cohen?
"Guilty, Your Honor."
Q Thank you.
Next, you pled guilty to making an excessive campaign contribution in violation -- and I'm going to read this slow into the record -- of 52 USC Section 30118 ( ) -- excuse me -- I'll withdraw that.
52 USC 30116 ( ) (1) ( ), 30116 ( ) (7) and 30109 (D) (1) ( ), as well as 18 USC Section 2 Subsection B.
You pled guilty to that; correct, Mr. Cohen?
gain, I don't see what you're reading.

Q Sure.
MS. H BB : Let's make that bigger, please?
Q "How do you plead to the charge in Count 5 of evasion of personal income tax for the calendar year 2016, guilty or not guilty, Mr. Cohen?" What did you respond?
"Guilty, Your Honor."
Q Thank you.
MS. F HERTY: Can I just note I think there is some discrepancies, Ms. Habba.
MS. H BB : I was getting to that.
Q So I think that what you're not understanding is the subsections, so let me just take --
MS. H BB : I'm take a representation --
Q Would you trust my word that those are the subsections you pled guilty to in the allocution, now we're putting this allocution in for evidence or would you like me to go through the process?
No, I would take your word for it.
Q Thank you, Mr. Cohen.
MS. H BB : nd first, I'm going to submit Exhibit D 951, if it's already not submitted into evidence. Okay.
MS. F HERTY: No objection, Your Honor.
THE COURT: It's in evidence.
By the way, we'll go until 4:40 and I'll give you a five-minute warning.

(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number D 951 in evidence.)
MS. H BB : Okay. Thank you.
Q Okay. In connection with that proceeding that we just discussed in the Southern District of New York there is a sentencing memorandum submitted. Do you recall that?
My sentencing memorandum or the government's sentencing memorandum?
Q It was at the U.S. ttorney for the Southern District of New York Robert Cuzan?
That would be government's, yes.
Q Do you remember that being submitted?
I do.
Q Okay. nd that was submitted in reference to you committing the crimes that you were motivated by personal greed. Isn't that correct, Mr. Cohen?
That's what it's stated, yes.
Q Do you remember that it stated in particular that you as an attorney and businessman committed four distinct federal crimes over the period of several years and that you were motivated to do so by personal greed and repeatedly used your power and influence for deceptive ends. Do you remember that?
Those are the statements of the government.
Q Great.

nd that you "repeatedly used your power and influence for deceptive ends." That was what it said, right, deceptive?
gain, yes.
Q nd deception is a form of lying, isn't it, Mr. Cohen?
I'll acknowledge that, yes.
Q Okay. In fact, he also noted that your crimes were marked by a pattern of deception that permeated your professional life, did he not?
He said that, yes.
Q Okay. nd his quote was, I believe, "but the crimes committed by Cohen were more serious than his submission allows and were marked by a pattern of deception that permeated his professional life and was evidently hidden from the friends and family members who wrote on his behalf." Is that correct?
This is what he wrote.
Q I know that's what he wrote.
Do I agree with the statement?
Q No, do you recollect him saying it; yes or no?
I recollect that it's written here and you're reading it appropriately.
Q Okay. Didn't he also note that you abused both your standing as an attorney and your relationship with my client, President Trump?
MS. H BB : Let's pull it up.
Peter, pull it up, please.

Q Those are the exact words. Would you like me to read them?
No.
Q Okay. Do you disagree that that is what he said in that statement?
I don't disagree that's what he said. I disagree with the premise.
Q That's the question. It's a yes-or-no question.
THE COURT: Just answer the question, please.
Q Do you agree that is what he said?
That is what it says.
Q Good.
nd you ultimately accepted a plea deal for those eight felony counts that were in the allocution that we put into the evidence prior?
I did.
Q nd in connection with accepting your plea deal, you appeared before the Honorable William Pauly of the Southern District of New York on ugust 21, 2018. Isn't that correct?
That's correct.
Q Okay. nd you were required in that agreement to answer a series of questions under oath, the same oath that you had in your deposition with me on this case a few months ago and the same oath that you're under today; isn't that correct?
That's correct.

Q nd you understood on ugust 21, 2018 that by being under oath, the same oath that you are on today and the same oath that you were in when I deposed you, that you had a legal obligation to testify truthfully and honestly; is that correct?
That's correct.
Q Good. nd you committed perjury in that proceeding, didn't you?
Excuse me?
Q You committed perjury under oath with Judge Pauly, didn't you?
MS. F HERTY: Objection, Your Honor.
MS. H BB : It's a direct question. Yes or no?
THE COURT: Objection overruled.
Did I commit perjury to Judge Pauly?
Q Did you lie to Judge Pauly when you said that you were guilty of the counts that you said under oath that you were guilty of? Did you lie to Judge Pauly?
Yes.
Q You have an attorney here today, don't you, sir?
I do.
Q You actually have several attorneys here. I recognize them some from other cases they're here, aren't they?
They are.
Q Good.
In connection with your guilty plea to Counts 1 through

5 for evasion of assessment of income tax liability for the calendar years 2012 through 2016, you testified that for the tax years that I just identified you willfully evaded paying substantial taxes on income that you received in which you knew was not reflected in the returns you filed; correct?
I don't understand your question.
MS. H BB : Okay. Let's pull up the next exhibit, please, Peter.
Q I'll quote you. You see right here it says:
" s to Counts 1 through 5 in the tax years of 2012 to 2016, I" -- and the "I" is you; correct, Mr. Cohen?
Correct.
Q "I evaded paying substantial taxes on certain income received that I knew was not reflected on the return and that I caused to be filed. The income intentionally not included was received by me in the Southern District of New York." Didn't you say that?
I did.
Q Okay. That doesn't say "tax omission," does it?
No, it does not.
Q But you earlier testified today that you omitted, you didn't evade, isn't that right?
I did say that.
Q Right. So you lied when you said that you evaded taxes to a judge under oath; is that correct?

Yes.
Q So during 2012 to 2016, did you ever tell your wife that you were committing tax evasion, Mr. Cohen?
THE WITNESS: Objection, Your Honor.
Q No. You don't get to object.
ctually, in all fairness, I absolutely do. Roswell versus United States, 1954 Supreme Court. We can also go on to Houston versus the United States. We can also go on to your favorite case of United States versus Nixon.
THE COURT: One at a time.
MR. KISE: It's very simple. Did he tell his wife that he was committing tax evasion at the time. That's a simple yes-or-no question and it's perfectly within the scope. He is a serial liar and if he lied to his wife, it's relevant for impeachment. It's absolutely irrelevant for impeachment.
THE WITNESS: It calls into question the fact that there was no tax evasion.
MR. KISE: I'm not directing anything to you, Mr. Cohen, I'm sorry.
THE COURT: Ms. Faherty?
MS. F HERTY: side from the fact that the question is palpably improper --
THE COURT: Well, on what grounds? I'm not disagreeing.

MS. F HERTY: First, marital privilege. Let's just get that out of the way --
THE COURT: Spousal privilege?
MS. F HERTY: Please, Your Honor, and I think this is below the belt he is giving testimony about the lies. Let's keep this focus, Your Honor.
THE COURT: I think it falls right within the spousal privilege. You don't have to testify about what you and your spouse talked about. I'll make it simple and leave it at that. Yes, go ahead.
MS. H BB : Your Honor, I apologize, but his wife was on that return and I will get to why it's important because in his deposition we did discuss his wife, so I'm sorry, but that wasn't objected to then, so it shouldn't be objected to now.
Q nd clearly, I hit a trigger with you, so Mr. Cohen noted, but I will say is it true or not true that your wife signed those returns?
MS. F HERTY: Objection.
Excuse me?
Q Did she sign those returns?
MS. F HERTY: Stop.
MS. H BB : What? That's just a factual question.
THE COURT: Yes, I'll allow that.
MS. H BB : Thank you.

Q Mr. Cohen, did your wife sign those returns?
Yes.
Q But you knew that the statement, this statement, was false when you made it, didn't you?
Yes.
Q So you lied to Judge Pauly which we've now established, but I'm supposed to admit that you're not going to lie to me now; is that correct? It's a yes-or-no question.
Unfortunately, I'm going to have to object to that, as well.
Q Yes, you can't object. That's not how this works. See, if you still had your law license, you'd understand that. It's a yes-or-no question.
nd your question is?
Q You lied to Judge Pauly; correct?
sked and answered.
Q No. gain, yes or no?
THE COURT: sked and answered.
How many times are you going to ask me the same question?
MR. KISE: Your Honor, this witness is completely out of control so I would ask the Court to direct the witness to answer the questions. I mean, the witness doesn't get to sit here and play judge. That's your job.
THE COURT: nd I'm doing it the best I can.

That question -- well, it's hard to say because it was really more of a statement than a question. There's already -- we've already been through it.
Why don't we again start from scratch. What question would you like to ask?
MS. H BB : Sure. Why don't I instead play from his deposition. Let's pull that up.
(Whereupon, there is a pause in the proceedings while a portion of video is played.)
THE COURT: sked and answered many times already.
Q Great. nd you have stated earlier --
THE COURT: Wait. So I had said to --
MS. H BB : I'll move on.
THE COURT: Ms. Faherty, when she was examining or cross examining, please don't categorize the answers or your point. You said "great," she said "great." Just ask questions, he'll answer and I'll make sure that happens.
MS. H BB : Sure, Your Honor.
Q In the deposition that we just saw from pril 28, 2023 -- well, first, let me just get some foundation questions.
You remember me deposing you on pril 28, 2023, do you?
I do.
Q nd was that from your testimony when I deposed you?
Yes.
Q Okay. nd in connection with your guilty plea to Count

6 for making false statements to a financial institution in connection with the credit decision, you testified that you knowingly submitted an application for a HELOC loan that contained false representations?
I'm sorry, can you repeat your question?
Q Sure.
MS. H BB : Your Honor, can I get a read back?
THE COURT: Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
gain, I don't really understand your questions. It's a compound question. I don't understand it.
Q So you don't understand the question.
So let me do something else.
MS. H BB : Let's pull up the Exhibit 951-22, please.
Q Okay. This is the same document that we put in before. It's the allocution.
Do you see that docket number? I'll represent that that's the same and this is the allocution that we put in as the exhibit.
Correct.
MS. H BB : Okay. Can you just zoom in on that portion?
Q I'll read it to you. You can have a minute to read it

yourself, if you'd like.
" s to Count 6, on or about February of 2016, in order to be approved for a HELOC, a home equity line of credit, I reviewed an application form that did not accurately describe the full extent of my liabilities. I did not correct the inaccurate information on the form. I signed it knowing that it would be submitted to the bank as part of their HELOC application process. The bank was federally insured and is located in Manhattan.
s to Count 7:
THE COURT: Did you know that those statements were false when you made them?
THE DEFEND NT: They were omitted" --
MS. H BB : The defendant is you --
"They were omitted, Your Honor, as opposed to being false.
THE COURT: While you knew it was false?
THE DEFEND NT: Yes, Your Honor."
MS. H BB : Not that part. Can you pull up the right part?
Q But I'm reading from your allocution. They can pull it up so you can review it.
Count 7 was campaign finance violation, not Count 6.
Q It's 22:6-21.
Can you --

THE COURT: Okay. Two things. I advise all attorneys on. People tend to read faster than they talk and numbers are difficult for court reporters to take down, so you have to really go slowly.

MS. H BB : Noted, Your Honor.

The document is inaccurate on line 14 as to Count 7, 7 had nothing do with the financial statements unless it refers to the campaign finance violation. We're referring to Count 6.

Q So you're saying that Judge Pauly's -- the transcript from Judge Pauly's hearing is inaccurate?

I'm saying as to Count 7 and Count 6 are obviously two different counts.

Q Okay. Taking away the count number --

MS. H BB : This is unbelievable.

Q Okay. For your HELOC, Mr. Cohen, did you not say that you submitted to the bank application process, a bank that was federally insured and is located in Manhattan, that you omitted information. Was that not true?

No. It states I did not correct the inaccurate information on the form.

Q Okay. Let's stop there. You did not correct the inaccurate statement on the form. Did you sign that form?

Sign the form.

Q Okay. So you did not correct the inaccurate information? Is that your way of saying I didn't lie because

you didn't correct an inaccurate information?

No.

Q Okay. Did you plead guilty to this?

I did.

Q Okay.

MS. H BB : This -- I believe you said we're going to stop at 4:40. This might be a good space.

THE COURT: You don't want another five minutes?

MS. H BB : Your Honor, if it's entertaining, I'm happy to go all night. I can continue.

THE COURT: ll right. If you're willing, I value every five minutes.

MS. H BB : Sure, sure.

Q So when you --

THE COURT: Five-minute warning.

MS. H BB : Noted.

Q You knew that that statement to Judge Pauly that you were guilty of the HELOC was false, didn't you?

Yes.

Q You affirmed under oath that the HELOC statement and the deposition in your pril 28, 2023 deposition that you lied to Judge Pauly about the HELOC; isn't that correct?

Correct.

Q So I just want to understand you were not lying in your deposition, but you were lying to Judge Pauly. Is that your

testimony today?

I took the plea.

Q Do you understand -- did you have lawyers representing you when you took the plea, Mr. Cohen?

I did.

Q Okay. nd did your lawyers explain to you what a plea is?

Yes.

Q nd did your lawyers explain to you that when you plead to something you are saying that you are guilty of that crime, do you understand that?

Yes.

Q nd do you understand that right now in front of all this press, in front of these lawyers, in front of the several lawyers that you decided to bring in here today, you are admitting that you lied to Judge Pauly. Do you understand that, Mr. Cohen?

I've already stated that, yes.

Q So that --

In fact, it's actually in the document that we presented to Judge Pauly.

Q Mr. Cohen, here's how this is going to work. You're not on Mea Culpa. You're not on your podcast and you're not on CNN. You're here with me?

MS. F HERTY: Objection, Your Honor.

Q You're going to answer them yes or no.

THE COURT: No speeches. Just ask the questions.

MS. H BB : Well, it works both ways, Your Honor.

Q You also submitted false sworn statements to the House Select Committee approximately one year earlier on ugust 28, 2017. Isn't that correct?

Yes.

Q nd as a result of those false statements you pled guilty to the crime of making false statements to the United States Congress in violation -- and I'm going to say this slowly -- of 18 USC 1001 Subsection Subsection 2. Isn't that correct?

That's correct.

Q nd in connection with accepting your plea deal, you appeared before the Honorable ndrew Carter of the Southern District of New York on November 29, 2018. Isn't that correct?

That's correct.

Q nd when you were in front of Judge Carter, you were required to answer a series of questions under oath, the same oath that you're under right now, isn't that correct?

That's correct.

Q nd you admitted under oath that on ugust 28, 2017, you submitted a false sworn statement to the Senate Select Committee on Intelligence. Isn't that correct?

Yes.

Q nd unlike your other plea hearing, you were being honest with the judge this time; is that correct?
Is there a question?
Q Yes.
What is it?
Q Do you need me --
MS. H BB : Can we get a read back?
THE COURT: Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Yes, that was correct.
Q nd you stated that you did submit false sworn statements to Congress, didn't you?
Yes.
Q So you have lied under oath numerous times, Mr. Cohen, isn't that correct?
That's correct.
Q nd you no longer have your law license, isn't that correct?
sked and answered.
Q nswer the question, please, Mr. Cohen.
THE COURT: Just answer.
Yes.
Q nd that's because you were disbarred in 2019; correct?
Correct.

MS. H BB : Your Honor?
THE COURT: You want to stop?
MS. H BB : This is right before our next section.
THE COURT: Okay. We'll resume tomorrow at 10 o'clock.
MS. H BB : Thank you.
MR. KISE: Please remind the witness he's not to talk to anyone, including his lawyers about his testimony.
THE COURT: Mr. Cohen, I hereby order you not to talk to anybody, including your lawyers about this trial or your testimony or anything related.
THE WITNESS: Yes, Your Honor.
THE COURT: Thank you. Have a good evening everyone.
(Whereupon, the trial proceedings are adjourned to Wednesday, October 24, 2023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al.

MICH EL COHEN
October 25, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

Supreme Courthouse
60 Centre Street
New York, New York
October 25, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

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THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.

THE COURT: Human bodies absorb sound. Can you imagine how loud that would be if the room was vacant? ll right. Let's get the issue of the photographers.

MR. KISE: Not for us.

MS. H BB : They're not going to want to come in.

MR. KISE: Can we do housekeeping?

THE COURT: Chris, they told me you're particularly photogenic.

MR. KISE: My family for sure.

THE COURT: When can we expect the missing person?

MR. KISE: I think momentarily, Your Honor, but can I raise two minor housekeeping matters?

THE COURT: ttorney General, ready to do some housekeeping matters?

MR. KISE: So, and Mr. Robert I think will back my memory and we will, of course, do whatever the Court wants, but so last night when we realized we did not receive anything on the Ivanka Trump motion from the Government, we

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went back and looked. Our understanding from our -- the conversation was they were going to file on Monday and we were -- you asked me how long we needed and we were going to have two days, so Wednesday.

But apparently, when I looked at the e-mail that was sent, it says everybody files on Wednesday, but that wasn't certainly our understanding. So what I'd like, because if the Court still plans to proceed on Friday, which is fine, with the hearing, I would just ask then that we have until tomorrow. If they filed something tonight, then we have until tomorrow night, 24 hours, but that was what we agreed to, was two days.

THE COURT: The motion is by a non-party, so I'm not sure --

MR. KISE: So we just -- until we see -- that was the point I made to Your Honor last week. Until we see what they have to say and the other side -- the other ones say, I don't know -- I'm just guessing at that point.

THE COURT: Does the ttorney General object to giving them until tomorrow?

MS. F HERTY: Your Honor, I think just in the orderly, efficient management of business, we're all commenting on a third party's motion. I think we can all put in our papers today.

THE COURT: Well, how about some compromise

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tomorrow at --
MR. KISE: Tomorrow is just one day. That was certainly our understanding of my dialog with you, Your Honor, was that you asked me how many days we needed after their response.
THE COURT: Can we do until noon, so we can read it, too, by noon tomorrow?
MR. KISE: Okay, yes, Your Honor.
THE COURT: ll right. Thanks. You had a second issue?
MR. KISE: Just an order of witnesses. I know that the witness from the Parks Department who was deposed Monday by video, I don't know if they're planning on calling that witness this week or if it is going to be next week.
THE COURT: Well, let's ask.
MS. F HERTY: Your Honor, I think what we are trying to understand is how today's proceedings are going to time out. We have a witness lined up for this afternoon. That will be Ms. Sherri Dillon if the time permits. Otherwise, we still have the remaining video of Ms. Mouradian. We have -- and we've informed counsel the remaining witnesses for this week.
Mr. Gaber is intending to take the deposition -- the testimony of Mr. Cerrone. I believe he might get pushed into next week as a result of Mr. Gaber's

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absence, but for the remainder of this week, we have three of our witnesses that are lined up to fill the time. I can speak with counsel to make sure they're fully informed about our order of witnesses. If they can equally just give us an update on their timing on crosses, so we can make sure all the witnesses are here, everybody is prepared to take the testimony as necessary.
MR. KISE: I think Ms. Faherty's commentary, because I forgot the point she just made, the reason I was asking about this witness in particular is because Ms. Hernandez who intends to do the cross of that witness, she's out with COVID, so she won't be back until Monday. So all I'm asking is we make sure that witness is next week when she's back, which I think based on what Ms. Faherty said will work. Otherwise, we are fine with whatever other schedule.
THE COURT: ll right. Good.
nd Chris, make it one o'clock tomorrow.
MR. KISE: Okay. Thank you. How about 2:15 since you give us the lunch hour?
THE COURT: We need it for that. One o'clock.
MR. KISE: Thank you.
MS. H BB : Your Honor, before we bring the witness in --
THE COURT: We have the photographers first.

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MS. H BB : Can we just do this first?
THE COURT: Sure. Go ahead.
MS. H BB : It is a little bit delicate and I want to start by saying I served as a law clerk to a judge when I first started practicing law and my candor, my judge was very strict about how I did and didn't behave. It is incredibly distracting when there are eye rolls and constant whispering at the bench when I'm trying to cross-examine a witness. So I'm just asking politely that that be refrained. It is very distracting.
THE COURT: Okay. Granted.
MS. H BB : Thank you.
THE COURT: Okay, photographers.
(Whereupon, there was a pause in the proceedings.)
THE COURT: Witness is on his way, right?
THE COURT OFFICER: Yes.
Witness entering.
THE WITNESS: Good morning.
THE COURT: Let's continue with the cross-examination of Michael Cohen.
MS. H BB : Thank you, Your Honor. Sounds good?
CROSS-EX MIN TION
BY MS. H BB :
Q Mr. Cohen, good morning.
Good morning.

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Q I just want to remind you that you're still under oath obviously from yesterday as the judge put you under oath?
THE COURT: True.
MS. H BB : Thank you.
Q I just want to ask you preliminarily, did you speak with the ttorney General's Office about your testimony between yesterday and today?
No.
Q Did you speak with your lawyer about your testimony between yesterday and today?
Yes.
Q Did you speak to anybody about your testimony between yesterday and today?
No.
Q Okay. Thank you.
s a follow-up from yesterday's cross, I just mentioned to Ms. Faherty I would like to admit Defendant's Exhibit 952 into evidence. It was the plea hearing allocution dated November 29, 2018.
MS. F HERTY: For the purposes of his allocution. Otherwise, all of the hearsay statements herein, I don't think it needs to be admitted, but for the fact that it was his allocution. No objection to that portion of it.
THE COURT: I'm not sure how we are going to distinguish between this and that. ny objection to --

MS. H BB : ny response to the objection?
THE COURT: ny response to the objection?
MS. H BB : Yes. n allocution is his words. They're not hearsay. The portions where a judge asked him a question and he responds that he's guilty is not hearsay at all. He confirmed yesterday that he was guilty and, in fact, I did ask him to restate the question and he himself said he responded guilty, so I'm not sure why it's hearsay.
MS. F HERTY: ny other statements in the transcript, that's all. Ms. Habba and I are talking the same language, Your Honor.
MS. H BB : I'm not sure that we are.
THE COURT: It is admissible for any and all purposes.
MS. H BB : Thank you, Your Honor.
THE COURT: That's what he said in open court under oath.
MS. H BB : Thank you, Your Honor.
Q Mr. Cohen --
MS. H BB : nd Judge, just so you know before everybody gets up in arms, I'm just going to do two or three yes, sir, just to review and clarify the record yesterday after seeing the transcript and then I'll move on.
THE COURT: Sure.
Q I want to clarify something about your testimony

yesterday. You stated that you previously pled guilty to several counts of tax evasion, right?
Correct.
Q nd those counts had nothing to do with Donald Trump; isn't that correct?
That's correct.
Q nd it wasn't done at the direction of Donald Trump or --
MR. KISE: We still really can't hear you.
MS. H BB : Sorry. Is that better?
MR. KISE: Yes.
Q So I had asked you if those counts had nothing to do with Donald Trump and I believe you responded yes. nd it wasn't done at the direction or benefit for President Trump, was it?
For Mr. Trump, no.
Q nd when you pled guilty to making false statements to a financial institution, that had nothing to do with Donald Trump, did it, for the HELOC?
I know what you're referring to.
Q Right.
The answer is no.
Q Okay. Thank you.
nd when you lied to Judge Pauley under oath at your plea hearing for those charges, that had nothing to do with

Donald Trump correct?
MS. F HERTY: Objection for the characterization. We did this yesterday. I'm just going to stand up now and forewarn my concern at what I thought was a little bit of a circus yesterday. I'm just putting it on the record now that if I need to stand up, I will stand up. My objection stands, Your Honor.
MR. KISE: So, Your Honor, Your Honor --
MS. F HERTY: Two attorneys.
MR. KISE: Right. The only circus yesterday was the witness not answering questions, so that's a fair question. He admitted here today for the first time in open court that he lied to Judge Pauley right across the street, right across the street. He lied to Judge Pauley when he pled guilty. That's what he said under oath in this courtroom, the same oath that he took there, the same oath that he took here. So in open court, he has now admitted to perjury in front of the Judge Pauley. I think that's a relevant fact for impeachment and -- may I finish? It should come in. I mean, there's no reason that that shouldn't come in.
MR. ROBERT: From the moment the case started, from the moment of my opening, the People started and talked about credibility. I talked about credibility. Credibility of the witnesses is what Your Honor is ultimately going to

have to decide in this case. The fact that the witness admitted for the first time yesterday that he committed perjury in the Southern District of New York as part of a plea, and we are going to get into other acts of perjury today, couldn't be more relevant in this case in enabling this Court to determine who's telling the truth and who is not.
THE COURT: Ms. Faherty, I don't understand the objection. Maybe say it again. What am I missing?
MS. F HERTY: First, Your Honor, counsel has twice now repeated this word "perjury" repeatedly.
THE COURT: Well, that's the definition of perjury, lying under oath.
MR. KISE: Thank you, Your Honor.
MS. F HERTY: The legal conclusion of perjury is very different. If you recall earlier this week or last week, we had counsel stand up, screaming, "Please don't let this witness violate his Fifth mendment rights." I am quite concerned at the presentation from counsel that they are standing up, making these accusations while the witness is still on the stand. I'm quite concerned and so I'm standing up to indicate that that type of showmanship should not be permitted.
Now, I agree, Your Honor, I did ask Mr. Cohen the very questions Ms. Habba is asking him and he has responded

consistently. So I would just ask for the courtesy and respect that we proceed without this showmanship of words like "perjury" thrown in this court which is a legal conclusion. It is unnecessary. Yes, untruthful. Yes, an admission of a lie. However, please, can we, please, proceed?

MR. KISE: Your Honor --

THE COURT: Wait. Wait. Wait.

MR. KISE: Okay.

THE COURT: Mr. Robert, Mr. Kise, I'll tell you rule number one in Engoron's courtroom, which I often say, if I'm arguing for you, you don't have to argue for you. So far, I totally agree with you.

So Ms. Faherty, is the basic point the word "perjury," is that what we're trying to avoid here?

MS. F HERTY: I think it is a legal conclusion, Your Honor, and I think that it instills a certain type of fear and intimidation in the witness in particular. That gives me great concern.

MS. H BB : Your Honor, if I may?

THE COURT: Yes.

MS. H BB : The perjury, although, the press is just hearing about it now, the perjury was heard at his deposition when he first said that he lied under oath with Judge Pauley. It is only now coming to light. He has

counsel. He had counsel then. This is not a shock. This is not showmanship. Everybody has had the transcript. It's just that the media hasn't heard about it until now. I'm just doing my job, sir. Mr. Cohen, as we know, is a witness who has interjected in many cases against my client and his credibility is the most important thing that I will attack.

THE COURT: Well, can we limit it to --

MS. H BB : Frankly, I'm done with that line of questioning. It's done. I will be honest with you.

MS. F HERTY: If we could move on --

MR. KISE: I don't know that we're done with that and --

MR. ROBERT: I'm certainly not.

MR. KISE: I will certainly say there is nothing wrong with calling a liar a liar. There's nothing wrong with calling someone who admits in open court to perjury. He was under oath in front of Judge Pauley. He was under oath in front of Judge Pauley. He said here yesterday under the same oath, "I lied to Judge Pauley." That's perjury. s Your Honor said, that's the definition of perjury. So we should not be expected to dance around it for someone's sensibilities.

serial liar is a serial liar and since the entire case of the ttorney General hinges on this perjurious witness who has lied to everyone he has ever spoken to,

we're entitled to bring that out. We're entitled to raise that. I think it is highly relevant. I think it is highly probative and we shouldn't have to dance around because of some sensitivity about words. Perjury is perjury and it is obvious what's going on here. The ttorney General is trying to cover for an extraordinarily defective witness that they're putting on the stand who has no credibility.

THE COURT: Now, you are violating two of my rules. First is what I just said. You don't have to argue if I'm arguing for you. Second rule, which I believe I've said during this trial, I know I've said, let's not make speeches. We are here for questions, answers, maybe argument, but we don't need speeches at this point.

My understanding, try to see if we can all agree, I believe that perjury implies conviction. You want to say he's lying, say he's lying, but let's not use the word "perjury" especially if you're asking him a question that might ask for a legal conclusion and let's move on.

MR. KISE: I'll just note my exception to that, Your Honor.

THE COURT: To which part of that?

MR. KISE: To the part that we are limited to what we can do. It doesn't imply a conviction. If he perjured himself, he perjured himself.

THE COURT: I'll have to --

MR. KISE: You don't need to have a conviction for that.

THE COURT: I'm not sure. I will have to research that. I take your point.

MS. H BB : I can state my question in a way that's acceptable to the Court and it is my last question on this. It is my last question on this at least.

Q Mr. Cohen, as a clarifying point, yesterday was the first time you admitted in open court that you lied to Judge Pauley, correct?

In open court?

Q Yes.

Yes.

Q Thank you. Okay. Let move on to your work with the Trump Organization.

You were an employee of the Trump Organization from 2007 to 2017; is that correct?

Correct.

Q nd you previously testified yesterday that you personally participated in the preparation of the Statements of Financial Condition for years 2012 through '15, that you don't recall working on the Statement of Financial Condition in 2011, correct?

That's correct.

MS. H BB : Okay. If I could, please, pull up the

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transcript --
Q Well, you said correct, so let me move on. nd you previously testified in your deposition that you and llen Weisselberg were tasked with coming up with valuations of the assets listed on the Statements of Financial Condition for those years, correct?
Correct.
Q nd you testified that llen Weisselberg prepared the first draft of those Statements of Financial Condition for Mazars, correct?
I'm sorry. Can you say that again?
Q Sure.
You had stated that llen prepared the first draft of the Statements of Financial Condition with Mazars, correct?
I don't believe that's how I stated it, no.
MS. H BB : Okay. If we could pull up 86:25 to 87:7 from the transcript, please.
MR. KISE: We still --
MS. H BB : Can't hear? Can we put the volume up?
IT SPECI LIST: Every time it gets bumped up a little bit --
MS. H BB : I almost want to take the mic off. I think everyone can hear me without it. I'll speak very loudly. Sorry. Let's move on. Can we, please, play that. Thank you.

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(Whereupon the video was played.)
Q Do you remember saying that, Mr. Cohen?
Yes, which is not what you were just stating.
Q So I asked if llen Weisselberg -- you testified that llen Weisselberg prepared the first draft. Isn't that what you stated you believed llen Weisselberg did?
No. I suspect that llen -- I do not know who did it. That was the point and that's exactly what I stated in the deposition.
Q Okay. So you suspect it was llen Weisselberg, but you testified that you were personally involved in coming up with a valuation for almost every asset on the Statements of Financial Condition, correct?
No, that's also not correct.
Q Okay.
Every asset? lmost every asset?
Q Okay.
MS. H BB : If we could play that back, please.
(Whereupon, the video was played.)
Q Right. lmost every asset, correct?
s the ones that I stated the other day.
Q We'll get to that. nd in coming up with a valuations for almost every asset, you testified that you would determine the valuations by going on Google and finding a comparable property with a price per square-foot that was higher, correct?

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Correct.
Q Okay. nd you testified under oath that you would handwrite the new valuations on the Statement of Financial Condition, correct?
That's correct.
Q nd llen would do the same thing, right?
Yes.
Q nd I want to be clear. llen Weisselberg, right?
THE COURT: That's a question.
Q llen Weisselberg, correct?
Yes.
Q ccording to your prior testimony for 2011 to 2015, this entire process of preparing the Statement of Financial Condition consisted of you and llen taking a printed piece of paper and then writing on it? That was what you did, correct?
Incorrect.
Q Incorrect, okay. Let's take a look at what you said in your deposition.
(Whereupon, the video was played.)
Q Mr. Cohen, you also stated that no computer was involved?
There was a previous question.
Q No. The question was did you say it. We played it back. Do you doubt that that was you?
I don't doubt that was me, but I doubt that that is

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responsive to the question that you stated.
Q Okay. My question that I stated, we can have a readback if you'd like.
Sure.
MS. H BB : Judge, may I have a readback?
THE COURT: The very last question?
MS. H BB : The very last question about his testimony for the handwritten edits, please.
THE COURT: Readback, please.
MS. H BB : Thank you.
(Whereupon, the requested portion of the record was read back.)
nd again, I'll state incorrect because the process was not just llen and myself as you saw in that deposition. It included Mr. Trump.
Q Listen, Mr. Cohen. I'm sure you're going to try and do that with me every time and I'm here for it really, but I would like you to answer the questions that I ask. I didn't ask you who was involved. I asked you --
MS. F HERTY: Your Honor --
THE COURT: Overruled. Let's -- let the question finish.
MS. H BB : Thank you.
Q I asked you if you made handwritten edits on the Statement of Financial Condition. Is the answer yes or no?

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I made handwritten edits to the Statement of Financial Condition.
Q nd you also testified to me that you did not and there was no computer involved in your edits; isn't that correct?
In my edits, correct.
Q Okay. But you actually said it wasn't done by you or llen on your computer. You said Donald Bender did it; isn't that correct?
That's what I believe, yes.
Q That's what you believe, yes. Okay.
MS. H BB : Can we, please, confirm that? Can you please play back his dep?
MS. F HERTY: Objection.
THE COURT: Why do we have to play it back? He agreed with you.
MS. H BB : Can you just read his answer for me? Sorry. I don't have a feed here just so you know, so it is a little bit tough for me.
THE COURT: You would just like his answer read back?
MS. H BB : Yes, please.
THE COURT: Please. Thank you.
(Whereupon, the requested portion of the record was read back.)
Q So it wasn't done on your computer or llen's, but then

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you and llen would take these handwritten edits and review them with Donald Trump, right?
Correct.
Q nd this meeting, according to you, would last about 15 minutes; isn't that right?
Correct.
Q nd the meetings between you, llen and Donald Trump were never put in a calendar; isn't that right?
To the best of my knowledge, no.
Q To the best of your knowledge, no.
Did you ever have an assistant?
No.
Q No. Did you ever keep a calendar for invitations for meetings on your computer?
No.
Q Did you use a computer?
Yes.
Q Okay. So you just had meetings in your head and they would happen and you remember them sitting here today; is that correct?
I'm sure. I don't understand your question.
Q Okay. Let me ask you this way.
Meetings with you, llen and Donald Trump on a Statement of Financial Condition lasted 15 minutes and were never scheduled; is that your testimony?

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Correct.
Q Right.
I would go into llen's office and there was an okay, we have it done. We would walk into Mr. -- towards Mr. Trump's office, knock on the door and say, "Mr. Trump, can we speak to you for a second."
Q Right.
That's how things worked at the Trump Organization. The door is constantly open for the executives. It was a constant carousel into his office.
Q Okay. nd llen Weisselberg would take the handwritten edits on the Statement of Financial Condition and hand it off to Donald Bender, right?
Once authorized to do so, yes.
Q That's not my question. He would take it when it was done and he would hand it to Donald Bender? Is that what you testified to?
THE COURT: I think when it was done is ambiguous.
Q Once the final version of the Statement of Financial Condition was complete in handwritten form, your testimony is that you would then give it to Donald Bender, correct?
No, that's not what I stated.
Q Okay. Who --
llen Weisselberg would hand it off to Donald Bender. I never did.

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Q How do you know that?
Because that was the relationship. The relationship existed between Donald Bender and llen Weisselberg.
Q Okay. It was your testimony that Donald Bender was continuously at the Trump Organization?
Regularly at the office.
Q Regularly at the office. What is the difference between the two?
THE COURT: There is a clear difference between continuously and regularly.
MS. H BB : Exactly there is, Your Honor, which gets to my point, Your Honor.
Can we, please, pull up the deposition?
MS. F HERTY: I'm sorry. Why?
MS. H BB : Because he didn't say "regularly," Colleen. He said "continuously" in his deposition.
THE COURT: ll right. Then she is allowed to play it.
MS. H BB : That's how impeachment works.
(Whereupon, the video was played.)
Q "Continuously," right, Mr. Cohen?
Sure.
Q Not "regularly," right? Your words, not mine. Were those your words?
That's what I stated, yes.

Q Thank you. So Mazars would receive the Statement of Financial Condition with the handwritten edits that you and llen had written on the prior year's Statement of Financial Condition was your testimony, correct?
I already stated that, yes.
Q You did not submit any electronic documents or any other supporting documentation, correct?
s to what? The Statement of Financial Condition --
Q s to the Statement of Financial Condition. There was no backup data?
I don't know the answer to that. I don't recall.
Q You don't know the answer to that?
No. I don't understand your question.
Q Okay.
THE COURT: I think the question is in addition to the years in the earlier statement and the handwritten notes that was then approved, did you give anything else like a computer printout or computer drive of any sort?
THE WITNESS: I did not.
THE COURT: Okay. That was the question and that's the answer.
Q Okay. nd your testimony is that this entire process of editing the Statement of Financial Condition from start to finish with llen, then approved by Donald Trump took a couple of days; isn't that right?

That's what I stated.
Q Okay. nd you never discussed the Statement of Financial Conditions with Donald Trump Jr. did you?
Not that I recall.
(Continued on the next page.)

Q nd you never discussed the SOFC with Eric Trump, did you?
Not that I recall.
Q nd you never discussed the SOFC with Ivanka Trump either, did you?
Not that I recall.
Q Mr. Cohen, you claim that you worked on the 2015 SOFC; is that correct?
Yes.
Q The 2015 Statement of Financial Condition was President Trump's net worth just over $6 billion? Do you know that?
You'd have to show me the document.
Q Sure. Let's do that.
MS. H BB : Can you please pull up PX 729?
Q Do you recognize this as the 2015 SOFC?
I do.
Q Okay.
MS. H BB : It's already into evidence. If we can just flip the page.
Q Do you see at the bottom where it says "his total assets." Can you read for me what that number is?
6,580,300,000.
Q Right. nd that number is meant to reflect President Trump's financial status as of June 30, 2015; correct?
Correct.

Q nd on July 16, 2015, just two weeks approximately after, you appeared on CNN and stated that you considered yourself to be a real estate expert and Donald Trump's net worth was probably over $10 billion. Do you remember that?
I remember saying that.
Q Okay. nd, in fact, you stated that you believed a $10 billion estimation was low. Do you recall that?
I recall that's what Mr. Trump wanted me to say, yes.
Q That wasn't the question, Mr. Cohen.
That's my answer.
Q Is it? I'm not surprised by that, Mr. Cohen. You're very good at blaming other people.
So $10 billion estimation was low.
MS. H BB : You know what, can you play that for me, please?
(Whereupon, there is a pause in the proceedings.)
Q Okay.
MS. F HERTY: Can you provide the date on that, please?
MS. H BB : I did. It's July 16, 2015. I said it in -- it's in the transcript.
I'd like to move --
Q That's you on that, I assume? You recognize yourself there?
Yes, less gray.

Q nd that was your clip from CNN on July 16, 2015?
That's correct.
Q Okay, thank you.
MS. H BB : Can we please move that into evidence, D 996?
MS. F HERTY: For purposes of those, the statements he made, no objection for that.
THE COURT: ll right. They're in evidence -- it's in evidence.
Q You stated that you considered yourself to be an expert in real estate; correct?
I did say that, yes.
Q Why did you say that?
I do have a pretty good understanding of New York City real estate.
Q Good.
THE COURT: Quick sidebar, Counsels. I can't stop myself from doing this. Just come up.
(Whereupon, an off-the-record discussion is held at the sidebar.)
THE COURT: Back on the record.
MS. H BB : Thank you.
Q Mr. Cohen, you went through a couple properties in that clip that were owned by the Trump Organization; correct?
Correct.

Q nd you stated that those properties are second to none; correct?
Correct.
Q nd the Trump brand has value as well; correct?
Yes.
THE COURT: Is that a question in the abstract or are you asking if he said that?
MS. H BB : No. Question in the abstract.
THE COURT: Okay. Had to be clear.
Q nd according to Predictive, the Trump brand at Fact Item 2000 -- the Trump brand is worth 3 billion; is that correct?
Is there a document that you're relating to?
Q Sure, sure.
MS. H BB : PX 431. Can you please pull up?
MR. KISE: nd, again, Your Honor, to the extent we're not waiving, you know, this, but I am -- I'm just pointing it out. I believe this is a 2011 document. We're not waiving our statute of limitations argument by introducing it.
THE COURT: Understood.
MS. H BB : If we could go to the second page?
Q Do you see that it says "based on the information it provided it's concluded that the value of the Trump brand is 2.8 to 3 billion?"

That's what it says.
Q Correct?
MS. F HERTY: Your Honor.
THE COURT: Don't say "correct."
MS. F HERTY: I'm just going to object to this document she's put it in front of him. We already established it's 2011. I don't know what this is. There is no proffer on this document, there is no foundation on this document. I'm objecting to it.
THE COURT: Sustained.
MS. F HERTY: Thank you, Your Honor.
THE COURT: We don't know what it is.
Q The Trump brand was worth billions of dollars; correct, Mr. Cohen?
I don't know that to be the answer.
Q But you're a real estate expert, Mr. Cohen, aren't you?
I'm not a brand expert, Ms. Habba.
Q You're not a brand expert.
Was the brand on the SOFC since you worked on it? Can you answer that?
I don't believe so.
Q You don't believe so? Is that a yes or no?
It's an I don't believe so. I don't think it is.
Q How can you not be a hundred percent certain when you and llen Weisselberg were the ones that were tasked with doing

it?
Then I don't believe it's on there.
Q Yes or no?
I would say no.
Q Thank you.
THE COURT: Wait. Hold on. You can't make him say yes or no. He's allowed to say "I don't know" or "I'm not sure."
MS. H BB : Okay.
Q Did you ever include the brand on the SOFC?
I did not.
Q Okay. Did Donald Trump ever include the brand on the SOFC?
No.
Q Did llen Weisselberg ever include the brand on the SOFC?
No.
Q Thank you. That answers my question with a no.
THE COURT: Please don't comment on the answers. You asked, he answered.
MS. H BB : ll due respect, Your Honor. I've answered every question that you want. Why are you screaming at me? I'm a subpoenaed witness.
MS. H BB : Mr. Cohen, let's continue.
Q Okay. You were represented at one point by Robert

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Costello; correct?
No.
Q No?
No.
Q So Robert Costello was not your lawyer at any point?
No.
Q Okay. Do you know Robert Costello?
I've met Robert Costello.
Q Have you spoken with?
I have spoken with Robert Costello.
Q Did you ever tell Robert Costello you don't have anything on Donald Trump, "I swear to God I don't have anything on Donald Trump?"
I don't recall that.
Q You don't recall? Did you --
THE COURT: Please don't comment on the answers.
MS. H BB : I am phrasing my question.
Q So do you recall that you told him you would "do whatever the," excuse my French, "F," I'll say, "it takes to avoid jail time?" Recall that?
I don't recall that either.
Q Okay. Mr. Cohen, Letitia James, ttorney General of New York, has personally thanked you as being one of the central reasons the ttorney General's Office investigation into the Trump Organization business dealings was initiated. Isn't that

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correct?
You're welcome. Yes.
Q You're welcome, you're welcome. That's telling.
So what I'd like to say is you're right --
MS. F HERTY: Your Honor, please.
MS. H BB : I withdraw that.
THE COURT: Okay. Withdrawn.
Q Did you -- you just personally thanked her now; correct?
I was being comical.
Q You were being comical.
Yes, I have seen the --
Q Let me ask you a question --
I did see the video of her thanking me and I never had a chance to say thank you.
Q You never had a chance to say thank you. So you want to do it now in court? Great.
You actually did have a chance to say thank you.
MS. H BB : Can you pull it up, please?
Q Do you see September 21, 2022, is this your handle on X now at the time Twitter @MichaelCohen212?
It is.
Q Okay. nd do you remember writing that tweet that says "I want to personally thank Tish James for acknowledging my participation and assistance in bringing accountability to the

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manner in Mussolini. My journey to the truth has been filled with sadness, pain and anger. Today's announcement makes it all worth it." Do you remember saying that now?
I wrote that.
Q Okay. So did you thank Letitia James?
Not personally. I thanked her on the tweet.
Q Okay. Thank you very much.
THE COURT: Please don't comment.
Q nd you take pride in your role in commencing the investigation; correct?
I acknowledge it.
Q You --
It's for acknowledging.
Q I don't think I understand that.
So by thanking her you're saying you acknowledge your participation?
I thanked her for acknowledging my participation. That's what it says.
Q Okay. re you proud that you participated in this investigation, Mr. Cohen?
I don't know if the word "proud" is the way I would describe it.
Q Did you say in your tweet that "this makes it all worth it?" The tweet's right in front of you.
Yes, I said that. Does that connote to the term

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"proud?"
Q Let's just move on.
Okay.
Q nd you personally assisted the ttorney General in its investigation of the SOFCs; correct?
No.
Q No?
No.
Q Okay. Mr. Cohen, did you write a book called "Revenge?"
I did.
MS. H BB : Can we please pull up "Revenge" at 179? I'll read this just to make it easy.
Q Mr. Cohen, is this your book?
That is.
Q Page 179 to 180 states: "Part of that offering was 400 hours of testimony before seven different congressional committees, talking to the Manhattan D , the ttorney General, and the Department of Justice. I cooperated with them all."
re you reading along with me, sir?
Oh, I am.
Q " s for the substance of cooperation, I want to make clear exactly what I gave to the government concerning Donald Trump. I gave them a roadmap. I gave them everything that I knew about Donald Trump. I provided the government with the

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basic understanding of how the Trump Organization operates with Donald at the helm. I explained the various roles of other executives and countless acts of illegal activities, the crimes mostly centering around finances. I provided, among other things, Trump's personal financial statements for various years, copies of checks and other assorted documents."

Does that refresh your recollection, Mr. Cohen?

s to what?

Q s to the question that you just answered differently; that you didn't personally assist the G with the investigation of the SOFCs?

When I was in conversation with the Manhattan District ttorney, the ttorney General's Office participated in those meetings and so what I did is I combined them together. There was no specific G meetings. They were present at my meetings with the Manhattan District ttorney's Office.

Q So the Manhattan District ttorney's Office and the ttorney General's Office were working in tandem. That is your testimony, correct?

That's my testimony.

Q nd, in fact, you saw them working in tandem; correct?

They participated in those meetings.

Q Together?

They were present in those meetings.

Q Were you promised anything from the ttorney General if

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you agreed to assist in the investigation of the Trump Organization, Mr. Cohen?

No.

Q You did claim that you provided a "roadmap," quote/unquote, of all the financial crimes that you claim occurred at the Trump Organization. Isn't that correct?

That's not what it says.

Q That's not --

What it says -- I want to make clear exactly what I gave the government concerning Donald Trump. I gave them a roadmap.

Q Can I just stop you there, Mr. Cohen?

You can.

Q Did you just say "I gave them a roadmap?"

THE COURT: He just said that, yes.

Q What's the answer to that?

lready asked and answered.

Q We're going to --

MS. H BB : Okay, Your Honor.

MR. KISE: The judge doesn't like that objection.

THE WITNESS: pologies, Your Honor.

The answer is yes, that's what I wrote. It's in the book.

Q Okay. Thank you.

These are your words in the book, correct?

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It's my words.

Q nd you claimed to have provided documentation which shows countless acts of illegal activities; correct?

You're reading that from where? Okay.

Q You can read it to yourself. Take your time.

MR. KISE: Can we have one minute, Your Honor, while he's reading that? Just counsel?

THE COURT: Sure.

(Whereupon, there is a pause in the proceedings.)

MR. KISE: Thank you, Judge.

Q Okay. ccording -- were we waiting for an answer? Did you read it?

Yes, I read it.

Q nd it says that?

Yes, I read it. It says it perfectly.

Q I'll speak really loud. Your testimony is that you personally participated in the SOFCs; correct?

Correct.

Q In fact, you claim you are personally responsible for coming up with many of the inflated numbers; correct?

Yes, correct.

Q nd you told them that you committed fraud in connection with preparation of the SOFCs; correct?

I don't believe that's what I said to them.

Q Didn't you say in the question prior that you told them

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you were part of the process of inflating the SOFCs?

MS. F HERTY: Just to clarify, I've lost this line of questioning. Who is the "them?"

Q Okay. Let me restart it. Let's just be clear. I appreciate that.

THE COURT: Withdrawn?

MS. H BB : Withdrawn.

MS. F HERTY: Thank you, Your Honor.

Q Mr. Cohen, you have testified between yesterday and today that you were personally responsible for drafting and coming up with numbers in the SOFCs; correct?

Which I did at the direction of Mr. Trump.

Q That's not what I asked you, Mr. Cohen.

Yes or no did you partake?

I did.

Q Okay. nd you told the District ttorney's Office that you did this; correct?

I can't go into that. There is another case that's pending right now. It's improper.

Q Not really because you've testified -- I'm sorry.

But you testified they were there, so if you told them, you told them; right?

MS. F HERTY: Your Honor, if I could --

MS. H BB : It's not --

THE COURT: Your microphone isn't working.

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MS. F HERTY: Can you hear me? If I can raise an objection here. I think this record at this point is a bit muddied and confusing. There was an excerpt from Mr. Cohen's book that we were just looking at. The questions were focused on the excerpt in the book. We have now closed the book. We're talking about themes, we're talking about the D . It is untethered. I'm a bit confused where this line of questioning is going and I would really ask that we keep it focused and direct. I don't understand what testimony is being elicited and I will say there is a parallel D NY proceeding, so I'm a bit concerned that the line of questioning is going beyond the scope of this case and bleeding into another case. So I'm just raising my concern that this line of questioning which started with the book is now untethered and I don't know where we actually are with this testimony.

MR. KISE: Well, Your Honor, if you're going to side with me I'm not going to say anything.

THE COURT: You're learning.

Well, sustained solely on the ground that I think it's unclear who "they" are, etc., etc.. I like to go with the simple rulings.

MS. F HERTY: Thank you, Your Honor.

THE COURT: So without prejudice obviously to whatever you want to ask about.

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MS. H BB : Sure.

Q Mr. Cohen, no charges were ever brought against you personally by D NY in connection with your work on the Statement of Financial Conditions, were they?

No.

THE COURT: D NY is the District ttorney of New York. Not everybody knows.

MS. H BB : Thank you, Your Honor.

Q nd, in fact, no claims were ever made against you by the New York ttorney General, were they?

No.

Q But you have claimed in your testimony that you are an essential player in inflating the assets in the SOFC; correct?

I stated that, yes.

Q nd despite all of that you were never named as a defendant in this case, were you?

I am not named as a defendant in this case.

Q So the ttorney General must not believe that your story is credible; is that correct?

You are drawing a conclusion that I don't know. You could ask Ms. James.

TTORNEY GENER L J MES: I object.

THE COURT: We're still researching that one.

Q You even met with Mr. Pomerantz; correct?

I have met with Mr. Pomerantz, yes.

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Q I'm not going to get into the conversations, just so you know.

re you aware that he noted in his book that there are significant risks with using you as a witness because of your credibility?

I didn't read his book.

Q Okay. Prior to termination of your professional relationship with him, you had a very high --

I'm sorry, who is "him?"

Q If you let me finish my question.

You had a very high regard of President Trump; is that correct?

Correct.

Q nd in the past you had a long history of praising Mr. Trump, isn't that right, Mr. Cohen?

lso correct.

Q In fact, you stated that you worshipped him. Isn't that correct?

Yes, that's correct.

Q nd you testified under oath before Congress that you are very proud to have served Donald Trump and that you would continue to support him. Isn't that correct?

I don't know what you're referring to.

Q Okay.

I testified seven times to congressional committees.

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Which one?

MS. H BB : Can we please pull it up on 102, D 960? Thank you.

Q Mr. Cohen, you were interviewed by -- in an Executive Session. It was a closed-door session with the Permanent Select Committee on Intelligence, the U.S. House of Representatives on October 24, 2017. Do you recall that?

I do.

Q Okay. nd that was closed to the public; right?

That was.

Q This is a transcript from that. s you can see it's an unclassified transcript from that hearing. Do you see that?

I do.

MS. H BB : Go back to the front page if you need. t D 960 -- can you please scroll up?

Q You state -- sorry.

MS. H BB : The next page.

Q Mr. Cohen, it says, "I am very proud to have served Donald Trump for all these years, and I will continue to support him." Do you now remember saying that?

This is the document that was prepared by the entire group that I referred in the direct. This was done by myself with lan Garten, this was done with Jay Sekulow, with a whole slew of individuals, but yes, I did make that statement.

Q You made that statement in front of that committee;

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correct?
Correct.
Q Thank you.
Your opinion of Mr. Trump was so high, in fact, that you once stated you would take a bullet for him; is that correct?
Vanity Fair, Emily Fox, yes.
Q Thank you're doing my work for me. I appreciate it.
nd you referred to yourself as the guy who protects the President and the family. Isn't that right?
That's also correct.
Q nd you've insisted that you would never walk away from Donald Trump; correct?
I stated that.
Q I would like to now show you a political article dated July 9, 2015, which is in evidence as D 986. I'm going to highlight a section. If you can just read it, please?
MS. F HERTY: What is this?
MS. H BB : You have this -- it's a political article dated July 9, 2015. It was given two days ago.
MS. F HERTY: Why are we putting this in front of him?
MR. KISE: Just sit down and you'll find out.
MS. F HERTY: Mr. Kise, I appreciate the commentary, but I would like a proffer of this. When you

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comment and ask the witness a question, I will extend the same courtesy to you.
MR. KISE: No. pparently the ttorney General hasn't. nd as Your Honor knows, we have given, particularly Ms. Faherty, an extraordinary amount of latitude in how she asks questions and have sat here with leading question after leading question and introducing documents and everything yesterday, everything comes in. So I think bringing up a document and giving us a moment or two to tie to it is well within the discretion of the Court.
THE COURT: Mr. Kise, please be respectful to the attorneys on the other side.
MR. KISE: I am being respectful, but they're not respectful to me. That group of attorneys over there, they asked Your Honor to sanction me. 33 years I have been practicing law. I've argued and won four cases in the Supreme Court of the United States and I am being subject to sanction for making legal arguments and they want me to be respectful to them? Respect is not something -- where I grew up respect is not something that you get. It's something that you earn and I believe as a lawyer I've certainly earned it.
THE COURT: I will try to jump into the fray here. I will say whenever there is an objection but the question by the ttorney General's counsel was leading, I always

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addressed it and I think I sustained probably more than half of them, so.
MR. KISE: You didn't, Your Honor. But my point was we didn't object. We just let it go because we're trying to move the case along and so we're asking the ttorney General, they're making arguments about documents and we haven't even had a moment to connect up before we even get to -- the examiner gets to say anything.
MS. H BB : nd, Your Honor, if I might just add myself. It is completely disrespectful when I just pull a document up and don't even get a question out. We'll be here well into tomorrow, I assure you of that. I have a lot of questions if this is how we're going to do it. I have a right to ask him questions. We've given you the exhibits like we were supposed to several days ago, so I would like to do my job for my client, please.
THE COURT: This document is already in evidence.
MS. H BB : Exactly.
MS. F HERTY: This is not admitted into evidence, Your Honor, no. It was placed into an exhibit folder --
MS. H BB : For you.
MS. F HERTY: -- for us to review two nights ago at I think 10:30 at night. nd, in fact, I came to the courthouse this morning, there was yet another added.
So if I stand up, respectfully, Your Honor, and say

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I would like a proffer because I have not heard a proper foundation laid to either impeach this witness, I haven't heard it yet. We have repeatedly this morning seen something thrown onto the screen declaring I'm going to impeach you with this new evidence when that hasn't been properly laid down.
Respectfully, I would appreciate Ms. Habba to continue with the examination in a way that sets the evidence properly. The foundation is laid, the questions can be asked, the evidence can come in. We have not been following that orderly procedure. That is all I've asked, Your Honor. I stood up and said voir dire this. What is this and what is its purpose for this particular witness?
MS. H BB : ll due respect, I just ask that it be put up, Colleen. You've been interrupting me.
MR. ROBERT: Your Honor --
THE COURT: Mr. Robert, you've been relatively quiet.
MR. ROBERT: nd I'll be brief. We have been here now four weeks and we have sat here while the ttorney General has put documents in front of witnesses and instead of putting them into evidence first, ask the witness spend five and ten minutes discussing them and then putting them into evidence. We have sat quietly because we wanted to get this thing done in an orderly and efficient process.

s far as exchanging of documents we have been the ones who have been vigilant. Every night the ttorney General is sending us five more, 50 more, a hundred more documents. That's the way this process works.

Ms. Habba is allowed to ask Mr. Cohen a question. Based on what his answers are and then make the determination whether the document be put into evidence or not.

Ms. Faherty now objecting to us being able to lay a foundation when for weeks now I have listened to them recite from documents that were not in evidence because we assumed subject to connection they would come in and they did is just grandstanding. Let's let Ms. Habba proceed and then when an application is made to put in evidence, the Court will deal with it.

THE COURT: I do think that the ttorney General's objection or interruptions is premature. document is put on the screen, I haven't heard anything. I stand corrected. Somebody said that this document was in evidence. I don't care who, but can we agree it's not in evidence?

MS. H BB : It's not in evidence. It was provided to the G pursuant to your rules two days ago.

THE COURT: Of course. That's hardly in evidence. nd I will say something else in response to Mr. Kise's comments on respect. I agree respect isn't mandatory or

assumed. It's earned, but in this courtroom I want everybody to respect each other.

MR. KISE: nd I certainly think I have done that, Your Honor, while I have suffered through an awful lot at the hands of the ttorney General in this case throughout this case. It has been extraordinary in my experience, extraordinary.

THE COURT: I'm not going to second that. Yes, I don't know what you have or haven't. So in the courtroom, no. I haven't seen it, but anyway, all right. We now have a document on. It's not in evidence and we'll ask Ms. Habba to proceed.

Transcript continues on the following page....

Q Mr. Cohen, do you recall in a political article dated July 29, 2015 that you stated, "The fact is Mr. Trump has built a $10 billion-plus empire, employs thousands of people, has worked with many leaders around the globe successfully and is considered one of the best negotiators in history. These are all qualifications essential to being a great president."

I made that statement.

Q Thank you. nd at that time, you thought Mr. Trump had all the qualifications necessary to be a great president, correct?

THE COURT: That's not what we are here for, by the way, obviously.

MS. H BB : Your Honor, it actually goes to credibility. I can explain.

THE COURT: ll right. I'll -- I didn't say you couldn't ask it, but -- or read it, but I just want to make sure we're focusing on why we're here, not external matters.

MS. H BB : bsolutely. bsolutely.

THE COURT: Okay.

Can you state the question?

MS. H BB : Could I, please, get a readback? Was there a question?

THE WITNESS: I don't know.

Q I just asked you if you stated that.

I stated, "yes."

Q We could do a readback if you want to make sure you answered, if Your Honor would like.

THE COURT: I am pretty sure he answered.

MS. H BB : He stated it. He answered the question.

Q Mr. Cohen, do you recall in a Reuter's article being quoted saying that "President Trump's record at the time" -- "Mr. Trump's record was proof of" -- "his success was proof positive of Mr. Trump's character and capabilities."

Do you recall that?

Is that another 2015 article?

Q That was dated ugust 28, 2015, yes.

Can I see it?

Q Sure. We can pull it up. This is D993- 4.

Mr. Cohen, you can see on the bottom that it says -- from the reuters.com website, correct?

Yes, I see that.

Q You see we highlighted for you the section, "Trump lawyer Michael Cohen stated Trump's record of success was "proof positive of Mr. Trump's character and capabilities."

Do you see that?

Yes, I see that.

Q nd do you now recall saying that in this article for Reuters on ugust 28, 2015?

I'm sorry. Your question is?

THE COURT: Do you remember saying it to Reuters?
THE WITNESS: Yes, I said this to Reuters.
MS. H BB : I am saying it, so I don't -- I am laying a foundation, so I don't get an objection. I will move on.
MS. F HERTY: For the sole purpose that this is an article that captures this statement, no objection. I mean, I'll also highlight this article also says, "For Trump, exaggerating has always been a frequent impulse especially when the value of his Trump brand is disputed." If counsel wants that in evidence --
THE COURT: You can do that on re-direct or whatever.
MS. F HERTY: This is, otherwise, a hearsay document, Your Honor. So for the purposes of that one statement --
THE COURT: dmitted just for the fact that he said it.
MS. H BB : That's it.
MS. F HERTY: Thank you.
MS. H BB : That is, frankly, the only thing I asked. "Did you say that in this article," period.
Q You said "yes, correct." Just so we are clear we have an answer, can I have a readback?
THE COURT: Did you say "yes" that you said this to

the reporter?
THE WITNESS: Yes, I did.
THE COURT: You have to say it into the microphone.
THE WITNESS: I did.
Q Mr. Cohen, you frequently defended Mr. Trump and stated that he was the only one person who -- "person that could make merica great again"?
gain, 2015?
Q No, 2016.
Yes.
Q Did you do it in 2015, too?
I did.
Q Okay. Do you remember Tweeting, "Thank you and believe wholeheartedly that only Trump will make merica great again on July 13, 2016"?
Off the top of my head, no, I don't recall that.
MS. H BB : If we pull up the Tweet from July 13, 2016.
Q Mr. Cohen, is that your handle on Twitter or what is now X?
Yes.
Q It is dated July 13, 2016, correct?
Yes.
Q 6:15 a.m.?
That's what it says.

Q nd can you read that for me, please, what you Tweeted?
"Thank you... and believe wholeheartedly that only #trumpwill#makeamericagreatagain."
Q Okay. nd you tagged "realdonaldtrump," correct?
Yes, I did.
Q That's President Trump's Twitter account?
Yes.
Q You tagged "womenforcohen?"
Yes.
MS. H BB : I would like to admit the Tweet into evidence as D995, please?
MS. F HERTY: No objection.
THE COURT: dmitted into evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit D995.)
Q So Mr. Cohen, after Mr. Trump was elected as president, you expected to get a position in The White House, didn't you?
Incorrect.
Q Incorrect. You didn't -- you did not think you were going to go to the White House? Is that your testimony today?
I didn't want to go to the White House.
Q My question to you was after Mr. Trump was elected as president, you expected to be given a position in the White House; is that correct?
I received the position that I had asked for.

Q But you thought you were going to be named chief of staff?
No, I did not. It was a joke that went along because of my relationship to Mr. Trump. I asked for and I received from Mr. Trump the position of personal attorney to President Donald J. Trump.
MS. H BB : Okay. I would like to pull up D58-3, please.
Q Mr. Cohen, was your home raided by the FBI?
Yes, it was.
Q When the FBI raided your home, did they take your phone?
They took both of my phones.
Q Okay. nd were a series of text messages attached as a memo in opposition to a motion to reduce your sentence?
I don't even know what you're talking about.
Q Okay. I'll represent to you that this is part of a docket number 1:18-CR-602. It is on the screen. It's in the court docket as 58-2. It is United States vs. Cohen. This is a printout attached to a memo that was submitted by the government with text messages from your cellphone that they seized by a subpoena and search warrant. Do you recognize that?
I don't.
Q Okay. Well --
MS. F HERTY: Your Honor, I am just going to put an

objection on the record to this. It might be premature, but I'm going to state my objection now. It just seems like we're delving in a trial within a trial within a trial and re-litigating issues in the Southern District case. I'm noting my objection to this exhibit coming in.

MS. H BB : This has nothing to do with that.

THE COURT: Overruled without prejudice.

MS. H BB : Thank you, Your Honor.

Q If you see --

MS. H BB : Can you blow up the text messages here. Thank you.

Q It states, "Person 4, Cohen or Powell, will be chief of staff. Cohen, that's you, that's your text message. Neither. Person 4, who then? Now this is you. Really, question mark. Person 4, if Powell, she'd be the first woman." gain, they say, "not Jared. Too close." Not Jared, you're speaking about -- I assume that's Jared Kushner?

gain, I don't recognize this document. No, I don't.

Q This is from the FBI when they seized your phone. Okay.

Q Cohen really --

Who's Person 4?

Q I don't know and it is irrelevant quite honestly.

Well, it's not irrelevant.

Q Okay. Is your name Cohen?

That is my name.

MS. F HERTY: Your Honor, again, I'm going to state my objection.

THE COURT: Give me your best shot. What's your best objection?

MS. F HERTY: First of all, we've already had testimony from the witness saying he does not recognize this document. We have log entries here indicating that there is a Person-4. Based on Ms. Habba's representation, is she asking the Court to accept the statements of these outside-of-the-court persons or Person 4 for the truth of the matter asserted?

There's inherent hearsay problems with this document. nd again, I think we're devolving into a trial of what? How is it relevant to the matters at hand, Your Honor? So again, I note my objection to this document, please.

THE COURT: ny response, Ms. Habba?

MS. H BB : Motive, Your Honor, motive and credibility. nd I will show Mr. Cohen's comments and the only comments that are relevant are Mr. Cohen's comments. These are his text messages. It was submitted on the docket by the FBI. It is unsealed. There is no question of that. Unless you're -- it is not hearsay.

I'm -- if you let me finish, I can get to it, but

you keep interrupting me which frankly, I have not done to you and had courtesy with you, which I'm getting a little frustrated. But I understand you don't like some of this testimony, so if you like, we can finish, and I can make a ruling, but you keep interrupting me.

THE COURT: Remember, everybody, there's no jury here.

MS. H BB : I understand, but Your Honor --

THE COURT: Nobody is interrupting you particularly. I'm just telling everyone.

MR. KISE: Unfortunately, there isn't.

THE COURT: So you don't ordinarily have juries maybe.

MR. KISE: Your Honor, as to this document, again, it's impeachment. It goes to credibility. We're certainly entitled to explore all the many ways in which this witness has twisted, moved, shifted very -- you know -- so that's all we're doing and I think that's appropriate.

THE COURT: Objection overruled. Just go ahead.

MS. H BB : Thank you. If we could scroll down. Thank you.

Q Person 4 states, "not Ivanka, too close. You state, keep guessing, dopey. Person 4, stop. You, question mark." Then you state, "I will give you a hint... yes."

Do you see that, Mr. Cohen?

I see that.

Q Okay. The person responds, "Oh, my God. Please be true. re you serious. You need to." nd then you say -- That's why Person No. 4 is important to know what it is.

Q Mr. Cohen, I'm not finished.

THE WITNESS: Sorry, Your Honor.

Q You state, "He needs to ask." Do you see that?

I see that.

Q Okay. So in your -- first of all, I'd like to submit this into evidence. It has already been on the docket, as I said, in 1:18 CR-602, D958-3.

THE COURT: Hearsay. n out-of-court statement being introduced to prove the truth of its contents -- are you introducing it to prove the truth of its contents?

MS. H BB : I'm proving it to impeach the witness who stated that he did not want that job. So the truth of the contents is yes, he stated in a text that he wanted that job. Solely to Mr. Cohen, Your Honor.

THE COURT: You know, I try to use commonsense when I'm applying rules. Objection overruled. It's in. I find enough of a foundation has been laid.

MS. H BB : Thank you very much, Your Honor.

Q nd you were never given a position in the White House, were you, Mr. Cohen; yes or no?

I was given the position --
Q Yes or no?
-- that I asked for. There was no shame in being personal attorney to the president.
Q We'll get to that, but my question is were you given a position in the White House?
I didn't ask for a position.
THE COURT: No. No. You have to answer the question.
THE WITNESS: It's a question I -- I don't know how I'm going to be given it if you don't ask for it.
THE COURT: Hold on.
Q Okay.
THE COURT: Hold on. I don't know whether special counsel or counsel to the president or personal counsel -- I don't know whether that's in or out of the White House, but you know, other than that, you have to answer the question. If you don't know whether your job was in or out of the White House, say that; but, otherwise, you were or you weren't.
Q Mr. Cohen, did you ever go to the White House as a position as an employee for the President of the United States Donald Trump?
No.
Q Thank you.

round that same time, you found other ways to personally benefit from your relationship with Mr. Trump, correct?
I'm sorry. nd what time frame are you referring to?
Q When the president or -- when Mr. Trump became President Trump, you found ways to benefit from your relationship with Mr. Trump, didn't you?
Yes.
Q In fact, didn't you candidly admit that you previously cashed in on your relationship with President Trump?
I don't know where you are referring to.
MS. H BB : Could you, please, pull up Disloyal at page 341.
Q Mr. Cohen, did you write a book entitled, "Disloyal"?
I did.
Q Is this -- does this appear to be what was the cover that was just up from Disloyal?
I'm sorry?
MS. H BB : Can you go back, please. You just had the cover up.
Q Is that your book?
That is.
Q Okay. Can you, please, turn to page 341. Can you read the part where it says -- the second red box, "Was I cashing in on my relationship with Trump? Of course, I was. What would

you do." Do you read that?
Yes.
Q Were those your words?
My words.
MS. H BB : I would like to admit Disloyal 341 into evidence, please.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 341.)
MS. H BB : Thank you.
Q Back when you acted as personal counsel to President Trump, you launched a personal company known as Essential Consultants, LLC as a way of cashing in on your relationship with the President of the United States; isn't that correct?
No, that's not correct.
Q That's not correct. Okay.
MS. H BB : Let's turn to page 341 again.
Q It is up. Take a minute to read it. Let me mow when you're ready.
(Witness reviewing document.)
Q " fter the election, I set myself up in a New York office of Squire Patton Boggs"?
I don't see where you are.
Q t the top, it is highlighted. " top-tier law firm located at Rockefeller Plaza as a strategic alliance which

really meant the partners could brag to their clients that the personal attorney to the President of the United States, President Trump, was part of their outfit. I was also using my company Essential Consultants to take on clients like T&T, Novartis, Columbus Nova and BT Bank, high-level companies desperate for insights and connections to the President and willing to pay for their assistance."
Did you read that?
You read it.
Q Did you read it?
I wrote it.
Q Correct. You wrote it. So those are your words, right, Mr. Cohen?
Yes, those are my words.
Q So when you said you didn't -- my question to you was did you launch a company known as Essential Consultants as a way of cashing in on your relationship with the President of the United States? You did, didn't you, Mr. Cohen?
gain, no.
Q You --
Let me explain.
Q It is a yes-or-no question, Mr. Cohen.
There is no --
THE COURT: You can explain on re-direct.
MS. H BB : Thank you.

Q nd didn't you primarily use this company to secure lucrative clients that were "desperate" for connections to President Trump such as T&T, Novartis, Columbus Nova and BT Bank?
Insights and connections, yes.
Q I'm sorry. What was that word that you said?
Insights and connections.
Q You're reading that from your book?
Correct.
MR. H BB : Okay. I would like to submit Disloyal, page 344 -- 341, excuse me, into evidence.
THE COURT: Granted. It is in evidence.
MS. H BB : Thank you.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 341.)
Q nd Essential Consulting ultimately received payments of more than $4 million; isn't that correct?
Correct.
Q Similarly, didn't you also enter into a strategic alliance with Squire Patton Boggs where you were paid half a million dollars annually to further capitalize on your relationship again with President Donald Trump?
s well as my other relationships, yes.
Q That was not the question. Your book that we just had up said Squire Patton Boggs wanted a relationship with you

because of President Trump, did it not?
It did.
Q Okay. nd the purpose of this strategic alliance was that -- so that the partners of Squire Patton "brag to their clients that the personal attorney to the President of the United States was part of their outfit." Didn't you say that?
I said that.
Q nd today, you have significant animosity towards President Trump, don't you?
Do I have animosity towards him? Yes.
Q That was the question.
Yes, I do.
Q Yes, you do.
In fact, you often go on social media, don't you, stating all of your animosity?
I use social media.
Q That wasn't my question.
MS. H BB : Can you, please, read back the question.
THE COURT: Read back, please. nd his response was not responsive. It did not answer the question.
MS. H BB : Thank you.
THE COURT: Readback.
(Whereupon, the requested portion of the record was read back.)

Not all my animosity.
Q But despite your animosity, you continue to financially benefit from President Trump, don't you?
No.
Q No?
No.
Q Since your release from prison, Mr. Cohen, your career has shifted from the practice of law towards entertainment and media; isn't that correct?
Can you define "entertainment and media"?
Q Sure. Mr. Cohen, you have made a career out of publicly attacking President Trump, haven't you?
Yes.
Q In fact, a substantial amount of your present day income is derived from publicly criticizing President Trump; isn't that right?
mongst other people, yes. It is not Mr. Trump only.
Q Okay.
It discusses news of the day.
Q So your testimony -- so is that a yes or a no?
That would be a no.
Q That would be a no, okay.
MS. H BB : Can we, please, pull up the transcript from Galicia.
Q Mr. Cohen, do you remember the Galicia case that you

and I were involved in?
I was a subpoenaed witness, yes.
Q You remember that I deposed you, correct?
I remember.
Q This is a copy of the transcript from that deposition. Just to lay a foundation, index number 24973/2015. Galicia vs. Donald Trump. The date on that is May 9, 2022. Do you see that?
I see that.
Q nd the time was 10:11. It was the deposition of non-party witness Michael Cohen. Do you see that?
I do.
Q It was held at Belkin Burden Goldman in New York and I deposed you at that time. Do you remember that?
I recall.
MS. H BB : If you could please switch to 103:19.
THE COURT: Five-minute warning.
MS. H BB : Thank you, Your Honor.
Q My question:
"What do you do for to raise money?"
You said, "You mean for a living?"
I said, "Yes."
You said, "Yes. I'm writing a second book which will be called The Department of Injustice. I have a podcast called Mea Culpa, top 50 podcast in the country. I am also

now placing them on YouTube and I also have on YouTube Michael Cohen Reacts which is I react to the news of the day or something that I find interesting in the news."

nd my question was:

"What do you find interesting in the news, Mr. Cohen?"

You said, "Everything."

nd I said, "Let's"-- "Now, let's go one by one. Mea Culpa is the podcast, correct?"

You said, "Correct."

"What do you discuss on Mea Culpa?"

Your response, "Politics, sometimes cult deprogramming, various different issues."

"Do you discuss any of the defendants in this case on Mea Culpa?"

Your response was, "I do."

"Who would that be," I asked.

"Former President Donald Trump."

nd I asked you how frequently just as I'm asking you today.

"How frequently do you discuss former President Donald Trump?"

Your response said, "Every podcast at some point has him included in it."

Do you see that, Mr. Cohen?

I do.

Q Okay. So when I asked you do you discuss President Trump every time you are on your podcast or social media, you said -- let me just ask the question.

Do you recall that you said that every podcast at some point has included Donald Trump?

I said it, yes.

Q Thank you.

MS. H BB : Your Honor, this might be a good stopping point.

THE COURT: Okay. Just to make it simple, let's all be back at 11:45.

(Whereupon, a recess was taken.)

(Continued on the next page.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: Ms. Habba, before you take -- the lectern has nothing do with you, but sometime prior to today, I think it was about a week ago -- no, two or three weeks ago --

(Whereupon, there is a pause in the proceedings.)

THE COURT: Withdrawn. Let's start from scratch.

Towards the very start of this trial, defendant Donald J. Trump posted on his social media account or one of them, I think it was Truth Social, defamatory, disparaging, completely untrue statements about the law clerk sitting to my right. I asked that they be taken down.

I was told ten minutes later they were taken down; turns out they weren't. They remained online and were e-mailed to thousands of people. I don't remember exactly how many. They were online for I believe it was 17 days.

t that point when I was alerted to it, I issued a limited gag order and told Counsel, the parties, that I was forbidding -- this is a quote, " ll parties from posting, e-mailing or speaking publicly about any members of my staff," unquote.

I am very protective of my staff, as I believe I should be. We all know that we are in what I called at some point, an overheated environment. I don't want anybody

killed.

It was just brought to my attention that the ssociated Press reported, I wasn't there, this is the ssociated Press, that Mr. Donald J. Trump just stated the following to the press outside the courtroom:

"This judge is a very partisan judge with a person who is very partisan sitting alongside him, perhaps even much more partisan than he is."

Now, it's very easy for the public, for anyone to know who that person is.

MS. H BB : Your Honor, sorry --

MR. KISE: Let me -- I hate to interrupt.

THE COURT: No, don't interrupt me. I'll give you plenty of time.

MR. KISE: Okay. I think you're under a misapprehension.

THE COURT: ll right. You'll correct me.

MR. KISE: Fair enough.

THE COURT: The last time that this gag order was violated by the incorrect statement that the post had been taken down it was actually copied to another post but that wasn't taken down. I accepted the explanation that it was inadvertent, I imposed a minimal fine. This recent statement, assuming the ssociated Press is correct, obviously was intentional.

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I stated the last time that a -- any future violations would be severely punished.

I will now give Mr. Kise or anyone else who wants to a chance to respond. nd, again, I'll ask the question why should there not be severe sanctions for this blatant, dangerous disobeyal of a court order.

MR. KISE: Your Honor, my understanding of what he said and the way I understood it and I believe Mr. Trump will tell you I believe he's talking about Michael Cohen sitting next to you who is even more partisan -- I mean, his whole commentary out there related to Michael Cohen and his credibility as a witness and so forth. We're certainly well aware of the order, so that's the way I took the statement and I believe that's the way it was intended, but I'll -- I don't want -- I don't know any other way to say it but that.

THE COURT: Well, can we ask Mr. Trump to whom he was referring?

MR. KISE: I have asked him. I mean, if you'd like to ask him, I have asked and that is exactly what he said because he's tired of listening. I don't want to go on a speech. He's tired of listening to what he's hearing and it's very partisan and you know the rest.

THE COURT: Sitting alongside of him. The person sitting alongside of me the way I would normally interpret those words is my principal law clerk. There is a barrier

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between me and the witness stand. We know from this trial and from our lives that language is sometimes precise and sometimes not very precise, sometimes ambiguous and not clear. Seemed clear to me, but I understand that could be interpreted another way. I'll take the whole matter under advisement. Let's not spend anymore time on this. Let's move ahead with the trial.

MS. H BB : Your Honor, are we on the record?

THE COURT: If we want to be.

MS. H BB : I also want to put on the record obviously we have a lot of press and media here. They couldn't hear past there. It was brought to my attention and evidently the feed -- the tech team just informed me the feed was also not being circulated, which obviously as you know this is a very heavily press-covered matter and given that I'm President Trump's lawyer I do think that's unfortunate and unfair.

THE COURT: nd, of course, I'm sorry for that, of course, and it's very unfortunate.

THE COURT OFFICER: Is the judge ready for the witness?

THE COURT: Yes.

THE COURT OFFICER: Witness entering.

THE COURT: Okay. Let's continue with the cross examination of Michael Cohen.

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MS. H BB : Thank you.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

CONTINUED CROSS EX MIN TION

BY MS. H BB :

Q Mr. Cohen, you didn't speak to anybody during your break, your attorney or anybody from the ttorney General's Office, did you?

I spoke to my attorneys.

Q Did you speak to them about your testimony?

No.

Q Did you speak to them about this case?

No.

Q Okay. You understand that you're still under oath, correct?

Correct.

Q Okay. Where we left off I was asking you if you made a career out of publicly attacking my client, President Trump. Do you recall that?

I recall it.

Q nd do you make a career out of publicly attacking President Trump?

No.

Q Do you admit that Mea Culpa, your podcast, is substantially focused on President Trump?

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Can you define "substantially?"

Q Sure. Earlier we read a transcript of your words where you say that you speak about President Donald Trump every episode of your podcast; is that correct?

I said that.

Q Okay. Do you speak about Donald Trump every day that you have a podcast? Does it always mention President Trump?

Yes.

Q Thank you.

nd you authored two books that discuss and are primarily focused on President Trump. Isn't that correct?

No.

Q No? Okay.

MS. F HERTY: Is that a question?

Q Mr. Cohen, is this one of your books?

Yes.

Q I'm holding up "Revenge." Do you read that the cover says "Donald Trump" on it? Is his name on the cover?

It is.

Q Thank you.

Did you write another book called "Disloyal?"

I did.

Q Does that also reference Donald J. Trump on the cover?

It does.

Q nd it does that because you make money off President

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Trump. Isn't that correct, Mr. Cohen?
I made money off the story.
Q nd who is the story about?
"Revenge" is about me.
Q You're -- I'm not done with my question.
Sorry.
Q Who is the story about, Mr. Cohen?
Which book?
Q Mr. Cohen, do you make money off President Trump's name?
Yes.
Q Thank you.
Did you receive an advance for "Disloyal?"
No.
Q No?
No.
Q Do you make money from "Disloyal?"
Yes.
Q How much is in your best estimation have you derived from your book "Disloyal?"
I don't recall.
Q You don't recall how much money you made from your book?
No.
Q Do you put your income from your book on your returns,

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your tax returns?
Yes.
Q Do you know how much money you make annually, Mr. Cohen?
I do.
Q nd how much is that?
THE WITNESS: I'm sorry, Your Honor. It's -- it's private. I'm not going into my --
THE COURT: I think in the abstract it's irrelevant.
MS. H BB : Okay.
Q Is your money from "Disloyal" on your returns?
Yes.
Q Do you make income from "Disloyal," from selling the book?
Not anymore.
MS. F HERTY: sked and answered.
Q Do you make money from your other book?
"Revenge?"
Q Yes.
Yes.
Q Okay. Did you get an advance for that book?
No.
Q No.
nd you also have a podcast dedicated to discussing in

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substantial part your criticism of President Trump; correct?
No.
Q No. But you said yes when I asked you prior, isn't that correct?
No. You said it.
Q Okay. Let me pull up your words then, Mr. Cohen.
MS. H BB : Can you please pull that back up again?
Q Do you remember I went through this Galicia testimony?
I apologize. I thought you were asking about the testimony, not about the Galicia. I really need you to be specific what you're talking about. I'm very confused right now.
Q When I asked you if you substantially discuss President Trump on Mea Culpa, your podcast, is the answer yes or no?
I said to you I speak about Mr. Trump. He is the frontrunner of the Republican party and he's in the --
THE COURT: That more than answers the question. Just answer the question.
Q How much income do you make from the podcast?
gain, going into privacy. It's irrelevant.
THE COURT: Is there an objection by the ttorney General?
MS. F HERTY: I'll object, Your Honor. Thank you.
MR. KISE: What would the basis be?

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THE COURT: Relevance.
MS. F HERTY: What is the relevance here? He has admitted he made income.
THE COURT: Overruled.
MS. F HERTY: Thank you.
THE COURT: I think there is a question of motive, etc.
MS. H BB : Thank you, Your Honor.
Q Please answer the question, Mr. Cohen.
Which podcast?
Q Let me ask you a different question.
How many podcasts do you have?
Two.
Q What are the names of your podcast?
Mea Culpa.
Q Right.
nd the other one is a live YouTube.
Q Is the live YouTube?
Called Political Beatdown.
Q It's called what?
It's called Political Beatdown.
Q Political Beatdown.
nd your affiliation with politics is because of my client sitting right here, isn't that correct?
No.

Q Were you involved in politics before President Trump became president?
In 1987 and 1988 I worked for Congressman Joe Moglia. I've also been on other finance committees with lan Hevesi and other politicians throughout the years.
Q Do you talk about them on the two podcasts that you just mentioned, Mr. Cohen?
They're not relevant right now.
Q That wasn't the question. Yes or no?
The answer is no.
Q That's what I thought.
So then you don't talk about anybody but President Trump when you're speaking about politics and that's how you make your money, isn't it, Mr. Cohen?
THE COURT: Please no comments on the answers. "That's what I thought." No. Just questions, answers.
MS. H BB : Sure, Your Honor.
Q So you can't as you sit here today tell me how much money you make off of the fact that you worked with President Trump; correct?
Correct.
Q But you make money off of President Trump; correct?
Correct.
Q nd you also sell merchandise off of President Trump, don't you?

Yes.
Q nd that makes you money, doesn't it, Mr. Cohen?
It makes money.
Q Outside of your two podcasts or one YouTube as you called it, your merchandise and your books, is there any other form of income that is greater in your life personally?
No.
Q Thank you.
MS. H BB : Sorry to thank him. Not thank you.
THE COURT: Well, "thank you" is not so bad. It's polite; "okay" is borderline. nything else, no.
Q nd you've also been invited on numerous media outlets to discuss President Trump, isn't that correct?
What time period are you referring to?
Q Since you started working for President Trump since you -- he became the president you go on TV to discuss him frequently, isn't that true?
Yes.
Q nd without stories or accusations about President Trump you really don't have anything to sell, do you, Mr. Cohen?
I'm sorry what? You don't have what?
MS. H BB : Can we get a read back?
THE COURT: nything to sell, but let's get a read back.
THE WITNESS: nything to sell?

THE COURT: I believe those are the exact words, but just -- we need a read back.
I disagree.
THE COURT: Hold on. We're going to get a read back. Sorry.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
THE WITNESS: I disagree.
Q Do you have a law license?
Not anymore.
Q Your primary form of income is because you speak about President Trump; correct?
It's asked and answered already.
Q I'm asking you a question.
THE COURT: It was asked and answered, so -- and there is an objection.
MS. H BB : No problem, Your Honor. Let me rephrase.
Q The more outrageous your stories are about President Trump the more money you make. Is that accurate, Mr. Cohen?
No.
Q If you didn't work for President Trump you wouldn't make most of your income today. Isn't that true, Mr. Cohen?
No.
Q But prior you stated that the majority of your income

is from talking about President Trump; correct? Yes or no?
gain, you're not providing the time frame. You keep going back and forth. Currently that is a correct answer. Previously you're assuming that I can go back in time when I had multiple real estate buildings and other assets before my five-year scenario that's been taking place, so I don't understand your question. There is no beginning, there is no end to it.
Q Because you wouldn't give me -- let me look at last year's tax return.
Last year you filed a tax return; correct?
Correct.
Q Okay. That tax return had your income on it, we hope; correct?
Correct.
Q Okay. nd allegedly you had put all of your income on that return; correct?
Correct.
Q Okay. You had most of the income on that return because of President Trump; correct?
MS. F HERTY: Your Honor, can we move this -- can we move this along? I do think the questions are a bit muddled, "because of President Trump."
We've established he has made money in connection with the work he's performed related to President Trump or

Mr. Trump. The time period is a bit confusing. I appreciate the point we're trying to make. It's a bit belabored. I'm just noting my objection to how cumulative this is getting.

MS. H BB : ll due respect, Your Honor, it's because I'm not getting a yes-or-no answer to a very simple question.

MR. KISE: Your Honor, I don't know -- now who is giving the speeches? But yes, all we're trying to get at is a simple answer to a simple question. He's already testified that the majority, I think, it's not clear, that the majority of his current income comes from his activities associated with harassing, trashing, talking about everyone, you know, President Trump. So he can affirm that if it was -- the question was confined to his last year's tax return did most of your income come from your activities associated with harassing, trashing, talking about, podcasting about, whatever it's called on the Internet, about President Trump. That's it. It goes to motive, it goes to bias.

THE COURT: Maybe we can compromise here.

Ms. Habba, would you rather the question be last year's tax return or would it be now? nd then the rest of it will basically be is it true that the majority of your income, last year's tax return or not, is based on commentary on Donald J. Trump?

MS. H BB : That's perfectly said, Your Honor. I'll adopt that question, if I may.

THE COURT: Do you want the tax return or now?

MS. H BB : Now.

THE COURT: Okay. Do you understand the question?

THE WITNESS: I understand the question. It's -- the issue I have is when you say "is the majority." I speak about all politicians. It's not just Mr. Trump. I speak about Mark Meadows, I speak about everything that's going on. I speak about Israel. I speak about many things.

THE COURT: Okay. Next question.

Q But your testimony was today that in every podcast no matter who you're speaking about, Mark Meadows, no matter if you're speaking about --

THE COURT: Wait. Before you establish that yes, he said every podcast these days he mentions Donald Trump.

MS. H BB : Okay, Your Honor.

THE COURT: nd along with what Ms. Faherty was saying, I think we can move on at this point. He makes money off his comments, his prior relationship to Donald J. Trump.

Q nd are you promoting your testimony here today, Mr. Cohen?

m I promoting it? I will retweet something. I will say I am at the trial, but I am not tweeting as per the judge's directive not to about anything specific.

Q So is it your testimony that you have not promoted you being here in court today?

MS. F HERTY: Objection. Promoted? I don't understand.

MS. H BB : I'll pull up an exhibit.

Q Is it your testimony that you have not been promoting the fact that you're coming here to testify against Donald Trump for the ttorney General?

I have tweeted about that, yes.

THE COURT: I'll allow that.

Q You tweeted about it and you discussed it on your podcast; correct?

I have.

Q nd during interviews on TV; correct?

Correct.

Q nd you've even stated that you intend on holding a press conference after your testimony today is finished, isn't that correct?

I don't recall that.

MS. H BB : Can we please pull up his tweet from October 15th?

Q Mr. Cohen, we've already established that your Twitter account is @MichaelCohen212; correct?

Correct.

Q nd do you see that on October 15, 2023 at 8:10 p.m. somebody stated -- just for their privacy I'm not going to read it in -- "I can't wait to see the reaction of all the haters of when you do testify... hold a press conference at the end of your last day, if you can." nd there are two emojis there. nd your response was: "I can and I will."

Do you see that, Mr. Cohen?

I see that.

Q re you going to speak to the --

THE COURT: Hold on one second.

MS. F HERTY: gain, I'm going to launch my objection to what is clearly hearsay evidence. Ms. Habba --

THE COURT: Overruled. Let's move on.

MS. H BB : Thank you, Your Honor.

Your Honor, I'm just going to state that clearly she is trying to throw me off by continuously interrupting me. I would like to just continue or we're going to be here all day.

MS. F HERTY: nd I would just ask to strike the portion of the tweet that is put in front of this witness. That is not his. That is not here, cannot provide any testimony as to the statements asserted therein. Move to strike that from the record. It is hearsay, Your Honor.

MR. ROBERT: Your Honor, that is absurd. Mr. Cohen is giving a statement without the underlying statement which

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is not for the truth of the matter asserted. He's responding to it. So if Ms. Habba would not have put in the bottom part, the objection would have been "it's incomplete, we don't know what Mr. Cohen is saying, I can and I will." This is completely admissible and it should be admitted without objection.

MS. H BB : nd it's for impeachment purposes, Your Honor.

MS. F HERTY: gain, she read into the record the out-of-court statements of another person and as to Michael Cohen's statements that is on the screen, you have admitted it, you have overruled as to Michael Cohen's statement. I accept that ruling by the Court, but as to Ms. Habba reading into the record third party out-of-court statements, I ask that they be stricken from the record.

THE COURT: Well, you know, it's always funny you want to strike it from the record. It's only 200 people out there that have heard it.

Well, what if we agree, for whatever it's worth, that the only admissible aspects are starting with dot, dot, dot, hold a press conference, etc., I can and I will. I find that admissible. We will take out "I can't wait to see the reaction of all the haters when you do testify."

MS. F HERTY: Over my objection, but I understand.

THE COURT: Okay. It's in evidence other than the

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first part.

Q Mr. Cohen, are you going to speak to the press outside after today?

I don't know yet. You're asking me to --

THE COURT: The answer was "I don't know yet."

MS. H BB : Okay.

Q Mr. Cohen, after I deposed you on other matters, did you go outside and speak to the press?

I did.

Q nd sometimes when I deposed you on other matters you had speeches prepared before you walked into your deposition, isn't that correct?

That's not correct.

Q That's not correct?

No.

Q Did you speak to the press before I deposed you on the Galicia matter?

Yes.

Q Did you speak to the press when I deposed you on this matter?

s did you.

Q That wasn't my question.

THE COURT: Just answer the question, please. Did you speak to the press?

THE WITNESS: Did I speak to the press, yes, I

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spoke to the press.

Q President Trump makes you relevant, doesn't he, Mr. Cohen?

I think the circumstances make me relevant.

Q The circumstances that you used to work for the President of the United States who is the single most famous presidential candidate in this world, you speak about him every day because it makes you money, isn't that correct?

THE COURT: I thought we were moving on from this point.

MS. H BB : Well, he's backtracking, Your Honor.

THE COURT: I didn't notice any backtracking.

MS. H BB : I'll keep going.

MS. F HERTY: Can we please stop with the characterizations, Your Honor, please?

THE COURT: I didn't find anything objectionable there.

Q Mr. Cohen --

THE COURT: Except I didn't notice any backtracking. Sorry. Let's just move ahead. The record says what it says.

MS. H BB : Thank you, Your Honor.

Q Mr. Cohen, do you sell advertisement spots?

Yes, there are advertisements in the podcast.

Q Do you sell the advertisement spots?

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I don't sell them, no.

Q Do you make money from advertising?

Good question. Yes.

Q nd the more advertisements you sell, the more money you make; correct?

That's how it works.

Q Is that a yes, Mr. Cohen?

That's a yes.

Q Mr. Cohen, would you disagree with the fact that the only reason you are relevant in the public eye is because of President Trump?

No.

Q You take every opportunity to criticize President Trump and discuss the latest Trump-related news, don't you?

long with CNN, MSNBC, Fox, BC, CBS, NBC. He's relevant in the news and that's what my podcast discusses.

Q You're right. President Trump is relevant in the news and President Trump makes money for the news, doesn't he, Mr. Cohen?

I don't understand your question, "Mr. Trump makes money for the news?"

Q Well, you sell advertising, right?

For me.

Q Do news media sell --

THE WITNESS: I'm so sorry, Your Honor. I don't

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understand. I apologize. I'm confused by your question.
THE COURT: Let's start again. Withdrawn, whatever.
MS. H BB : Sure. Let's keep going and I'll continue.
THE COURT: nd move on to another topic as soon as possible.
MS. H BB : I can ask it in one simple question.
Q Mr. Cohen, you have financial incentive to criticize President Trump; correct? Yes or no, please?
Yes.
Q Thank you.
But Mr. Cohen, you never used to speak like that, did you?
THE COURT: Sustained. I don't know what the context is. Speak like that what?
MS. H BB : I'll just ask the questions.
Q Mr. Cohen, do you remember in 2015 telling Politico: "The fact is Mr. Trump has built a 10 billion plus empire, employs thousands of people, has worked with many leaders around the globe successfully and is considered one of the best negotiators in history, these are all qualifications essential to being a great president." Do you recall saying that?
I think we already went through this.
Q Yes or no? Yes or no?

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It's been asked and answered.
THE COURT: I don't think that particular quote was -- it was?
MS. F HERTY: I think so, Your Honor.
MR. KISE: Is the witness now objecting? This is a new level of low, even for Michael Cohen.
MS. F HERTY: gain, if we could --
THE COURT: Sustained, sustained.
MS. F HERTY: Thank you.
Transcript continues on the following page....

M. COHEN - PL INTIFF - CROSS(MS. H BB) Page 2396

Q Mr. Cohen, did you state on January 2017, "President Elect Trump has always stated how much he loves what he does. nyone who spends more than four decades building a $10 billion empire would clearly be sentimental about relinquishing control," said Michael Cohen, executive VP of the Trump Organization. "However," you said, "President Elect Trump has also stated that there is nothing more important to him than fixing the mistakes made by the previous administration and making merica great again."
Did you say that, Mr. Cohen?
I believe those are my words.
Q Do you need me to refresh your recollection?
No. I'm looking at what it is that you put up on the screen.
Q So is that a yes?
I believe those are my words, yes.
Q Is that a quote with your name on it, Mr. Cohen?
Yes. nd this is from 2015 again?
Q This is from January 3, 2017, CNN.
2017, yes.
Q Do you recognize that as your words?
Yes, it seems like it could be my words.
MS. H BB : I would like to move into evidence this quote.
I don't have the number, Peter. Do you have it?

M. COHEN - PL INTIFF - CROSS(MS. H BB) Page 2397

987.
MS. F HERTY: Your Honor, I'm just re-asserting the same objection I've had. In fact, I don't even know what this document is. There's not even a title. There's not even an author. I don't know who wrote it. There's been no foundation laid other than there was a statement that at some point was captured by someone in this article. If it is as to that one statement, no objections since Mr. Cohen has testified that those were his words. Otherwise, the objection remains as to the admission of this document.
THE COURT: You don't want -- you don't want the document in, but the words that have been read and he said, "Yes, I could have said that," whatever -- can we just --
MS. H BB : I could lay the foundation and clear this up, if you'd like. I don't really -- I mean, it is for impeachment purposes, number one. I asked him if he said it. He said he didn't recollect, so I brought it up and now he recognizes that he brought -- he said it, so I'm moving it into evidence.
I'm not sure -- we're really going to be here all day, Ms. Faherty if this is what we are going to keep doing. It is a CNN article. Look at it. Here is the website. I don't even need the whole article in. I just asked Mr. Cohen if he said what he said and now he said, "yes."
THE COURT: So, then, we don't need the article.

THE FOREPERSON: nd we don't need --
MS. H BB : I won't move it.
Q Thank you for acknowledging you said it. Moving on, "I worked for Mr. Trump now for a long "-- "long time," you said. I can tell you that Mr. Trump's memory is fantastic and I never come in a situation where Mr. Trump has said something that is not accurate."
Do you recall saying that in an interview with CNN on November 30, 2015, Mr. Cohen?
Can you provide me with a document?
Q Sure. I will provide you with a document.
MS. H BB : Can we, please, zoom out first.
Q Do you see the website on the bottom of this document? Do you see that it says, "cnn.com?" I'm not going to read it all in, but do you see that?
I do.
Q It is from the CNN website?
Yes.
Q Okay. Do you see that there is a title, "Trump lawyer: Never known him to say something inaccurate."
Do you see that on the top, on the top? Do you see that?
MS. F HERTY: No.
Q No. Do you see on the top of the page that it says --
Yes, I see it.

Q Thank you.
MS. H BB : Can you, please, go to his quote.
Q Does this appear to be from the website from CNN?
It appears to be, yes.
Q Okay. Do you recall saying, "I'm not so sure that that's true and I've worked for Mr. Trump for" "now for a long time," Cohen said. "I can tell you that Mr. Trump's memory is fantastic and I've never come in a situation where Mr. Trump has said something that is not accurate."
Is that in quotations, Mr. Cohen?
That's in quote.
Q nd you understand the press, don't you, Mr. Cohen?
I do.
Q nd if you don't speak on the record, the press can't put you in quotes and relate it to your name. Isn't that true, Mr. Cohen?
For the most part, yes.
Q In fact, you used to record yourself speaking well about the president to the press sometimes, didn't you, Mr. Cohen?
I don't understand your question.
Q How often did you speak to the press when you worked for President Trump?
Every day.
Q So you know that they would never put that in quotes

unless you said it was on the record, correct, or forgot to say that it wasn't? Isn't that how it works?
Yes, that's how it works.
Q Is that your quote, Mr. Cohen?
That would be my quote.
Q Okay. Thank you. I don't need it into evidence. So I'm not going to, but you know what. ctually, let's move it into evidence. We laid the foundation anyway. I'd like to move that into evidence, CNN article dated November 30, 2015.
MS. F HERTY: Same objection and -- same objection, Your Honor.
THE COURT: Overruled. It's in.
MS. H BB : Thank you.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 987.)
Q pril 15, 2011, you interviewed with BC News and said, "It's very, very surreal. I've been admiring Donald Trump since I was in high school."
Do you remember saying that?
You are going, again, have to refresh my memory.
Q Sure.
MS. H BB : Pull it up, please.
Q Mr. Cohen?
Yes.
Q Do you see the website on the top of this screen?

Yes.
Q It says, "The wayback machine." You see BC News on the top right?
I do.
Q Okay.
MS. H BB : Can you get out, please zoom out. Can you put in his quote and blow it up.
Q Do you see that, again, in quotations, it has the quote that I just read? It says, "Cohen told BC News "and then it states, "I've been admiring Donald Trump since I was in high school. He said that when he was a young man, he read Trump's 1987 book, "The rt of the Deal" cover to cover twice." Isn't that correct?
Yes.
Q Do you doubt that those are your words, Mr. Cohen?
No.
Q Did you read "The rt of the Deal" twice when you were in high school?
No.
Q So were you lying?
No. I read it twice when I was in college.
Q Oh, okay. In college. I got it. So you read, "The rt of the Deal" twice in college, right?
I just answered that.
Q But that was before you worked for President Trump,

correct?
Correct.
Q Did you admire President Trump in college?
I did.
Q Okay. Let's move on. Do you recall saying, "That's what people want to see, authenticity. I mean, who's smarter than Donald Trump. He's the greatest negotiator on the planet. He is presidential." You said that on Sean Hannity on ugust 4, 2015. Do you recall that?
I recall that.
Q Do you recall that you also said on Sean Hannity on July 21, 2016, "I know Mr. Trump. I've stood by him shoulder to shoulder for the past decade. I've seen him in action. He knows how to build things. He knows how to fix things. He knows how to make them better. He knows people. He loves people. He said it himself. He's able to relate to the plumber, to the electrician, to the laborer because that's what his father Fred taught him and he learned values and that's something that a lot of politicians, specifically Hillary, does not have, is values."
Do you remember saying that to Sean Hannity?
If you can show me. It sounds correct.
Q Sure?
But I don't recall that that's exactly what I said.
Q Sure. We can show you.

MS. H BB : Can you pull it up? Is it a video? We're having some technical issues.
I'll tell you what. I'll acknowledge.
Q No, I don't want you to do that, Mr. Cohen.
I will acknowledge that I did, so we can move this thing faster.
Q Did you say to Vanity Fair on September 26, 2017, "I'm the guy who protects the president and the family. I'm the guy who would take the bullet for the president." Did you say that?
Yes.
Q Did you say to Hannity on March 20, 2017, "I think he's a wonderful man. I think he's going to be an amazing president. The family is just, you know, fantastic." Do you remember saying that?
I don't remember saying that.
MR. H BB : Do we have that one? Thank you.
Q Do you see this is Fox News article dated March 20, 2017?
I will remain the personal attorney to Trump?
Q That's right. That's what the title is. That wasn't my question. The question is, is this dated March 20, 2017 from Fox News?
That's what it says.
Q Great.
THE COURT: Please, no comments on the answer.

MS. H BB : Sorry.
Can you blow up the portion, please. Thank you.
Q Can you read that to yourself, so I don't have to read it again.
(Witness reviewing document.)
Q Do you recall now saying what I read, "I think he's a wonderful man. I think he's going to be an amazing president. The family is just, you know, fantastic." Do you remember saying that now?
I have said that.
Q Thank you.
Do you remember on pril 15, 2011 in an interview with BC News saying, "I think the world of him. I respect him as a businessman and I respect him as a boss." Do you remember saying that?
Where are you reading from?
Q It's not here. I'm asking you.
From where?
Q BC News, pril 15, 2011.
gain, I'll need to see something to refresh my memory.
Q Sure. Let me ask you. I'm going to move this along. Would it surprise you to hear that you said to Reuters on ugust 28, 2015, "Trump's lawyer, Michael Cohen, said Trump's record of success was proof positive of Mr. Trump's character and capabilities." Is that something you would say, Mr. Cohen?

Yes.
Q Do you believe or have any reason not to believe that you said that to Reuters on ugust 28, 2015?
I don't know. I'd have to see the document.
Q Okay. We can pull it up. This is an article from Reuters. You see that dated ugust 28, 2015 and the title is, "Best President ever. How Trump's love of hyperbole could backfire." Do you see this?
I do.
Q Can you, please, pull up his quote. "Trump's lawyer, Michael Cohen, said Trump's record of success was proof positive of Mr. Trump's character and capabilities." You see that?
I do.
MS. F HERTY: Your Honor, didn't we do this before? I thought I quoted from the below line, "For Trump, exaggerating has always been a frequent impulse, especially when the value of his trump brand is disputed." Can we move it along? I thought we did this already.
THE COURT: I believe we saw that, character and capabilities.
MS. H BB : Did we see this one?
MS. F HERTY: We saw that.
MS. H BB : Okay. We'll move on.
THE COURT: Ms. Habba, how much longer will we hear this sort of -- these statements?

MS. H BB : I have a ton, Your Honor, but I can move it along.
THE COURT: Okay. --
MS. H BB : Let me try --
THE COURT: They're getting cumulative.
MS. H BB : Sure. Give me a moment. I will move it along.
Q Do you recall speaking to HuffPost and saying to them that "He is worth a lot, substantially more than what's recorded in Forbes. They don't take into account the value of the Trump brand, of the mark, one of the most valuable marks that's ever been created. He has very little debt, assets." Do you remember saying that on pril 22, 2011?
I would need to see the document.
Q Okay. Do you have any reason to believe -- I'm going to try to move it along for the tech people.
Do you have any reason to believe that if they quoted you as saying that, that you didn't say it? Do you have any reason --
Sorry. That's 2011?
Q Yes.
Yes.
THE COURT: Yes meaning --
THE WITNESS: That I probably said it.
THE COURT: Okay.

MS. H BB : Okay. This will be my last one, Your Honor.
Q nd in July 31, 2014, The ssociated Press quoted you as saying "Mr. Trump's significant wealth, name, recognition and real estate knowledge makes him a viable option." Do you recall saying that?
gain, I need to see the document.
MS. H BB : Can we pull up the P document, please. Do we have it?
I was moving very quickly, so I feel for my tech team right now. I'm not going to admit it into evidence.
Q Mr. Cohen, would you doubt if the ssociated Press quoted you, put your words in quotes, that that was something you said on the record?
It's possible.
Q Do you believe the P would do that without --
gain, I don't know. I haven't seen the document.
Q Okay. Let's move on. Mr. Cohen, you testified under oath in your pril 28, 2023 deposition that Mr. Trump tasked you and Mr. llen Weisselberg with inflating the numbers on the Statement of Financial Condition to reach a certain pre-determined number for his net worth, correct?
Correct.
Q But Mr. Cohen, in February of 2019, just two years after leaving the Trump Organization, you testified under oath,

the same oath that you're under now, the same oath that you were under at your deposition, and the same oath that you were under when you spoke to Judge Pauley, you said to the Permanent Select Committee that you couldn't recall President Trump ever asking you to inflate the numbers in his Statement of Financial Condition. Do you remember that?
I don't.
MS. H BB : Let's pull it up.
Q Mr. Cohen, do you see this document? Please go to the front page. Does it say, "Executive Session Permanent Select Committee on Intelligence U.S. House of Representatives in Washington DC?"
Yes, it does.
Q It does? Does it say that you were deposed?
It says, "deposition of Michael Cohen."
Q Were you deposed?
I was.
Q Were you deposed on Thursday, February 28, 2019?
That's what it says.
Q Okay. t -- commencing at 9:35 a.m.?
Yes.
Q nd you can see who was present there, correct?
Correct.
Q Do you remember this?
I do.

MS. H BB : Can you, please, pull up 92:6.
"QUESTION: Did Mr. Trump direct you or Mr. Weisselberg to inflate the numbers on his personal statement?"
Your answer, "I'm sorry." Did he ask me to inflate the numbers?"
nd what do you say, Mr. Cohen?
I stated, "not that I recall."
Q Not that I recall. That's not all you said.
No.
Q No. Those are your words, correct?
Those are my words.
Q nd did you say -- you don't dispute that that was you, correct, in front of the committee two years after you left the Trump Organization?
I already stated that's my deposition.
Q So Mr. Cohen, as you sit here today, are you telling me the truth and the ttorney General the truth or were you telling the truth then?
I was in the camp of Donald Trump --
Q Yes or no? It was two years after you stopped working --
You didn't ask me a yes-or-no question.
Q Yes, I did.
No, you didn't.

M. COHEN - PL INTIFF - CROSS(MS. H BB) Page 2410

Q Okay, Mr. Cohen.
MS. H BB : Can we, please, get a readback of my original statement, question?
THE COURT: It wasn't yes or no, but it was either/or.
THE WITNESS: So, please, allow me to answer.
MR. H BB : Let me rephrase my question, Your Honor.
THE COURT: Okay.
THE WITNESS: Can I not answer the question that's in front of me?
MS. H BB : Withdrawn.
THE COURT: Her question is withdrawn.
MS. H BB : Question is withdrawn. I'm going to rephrase my question.
Q Mr. Cohen, were you being honest in front of the Permanent Select Committee when you testified on February 28, 2019?
No.
Q So you lied under oath in February of 2019? Is that your testimony?
Yes.
Q Mr. Cohen, I just have one more question, maybe two. Did you ever ask President Trump to pardon you while he was in the White House?

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No.
Q He didn't pardon you, did he, Mr. Cohen?
No.
MS. H BB : Thank you. I'm done.
THE COURT: Well, we have about eight or nine more minutes. Re-direct?
MR. ROBERT: Your Honor, I have cross-examination.
THE COURT: Oh, I'm sorry.
MR. ROBERT: I think it may make sense to take the lunch break now, so we can work out the mechanics of the microphone and we can start at 2:15.
MR. KISE: We may be able to streamline it as well.
MR. ROBERT: Yes. I will be as brief as I can.
THE COURT: So I'm breaking until 2:15, everybody. Thank you.
(Whereupon, a luncheon recess was taken.)

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F TERNOON SESSION
THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.
THE COURT: Well, at least my microphone is working this time.
I want to resume the discussion about what happened this morning when Defendant, Donald J. Trump, apparently made a statement to the press referring to "the person next to me," and I'll pick up where I left off.
Mr. Kise I believe said on behalf of Defendant Trump, I'll call him, that he was referring to Michael Cohen when he said what he said about the "partisan democrat," etc.; is that correct?
MR. KISE: Yes.
THE COURT: I'm going to hold a hearing right now about that.
MR. KISE: Okay.
THE COURT: nd I'll have as my -- as the first witness, Defendant Donald J. Trump.
Mr. Trump, would you like to be on the witness stand to testify? Come on up.

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THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm any testimony you give will be the truth, the whole truth and nothing but the truth?
THE WITNESS: I do.
THE COURT OFFICER: You may have a seat. Please state your name and either home or business address on the record.
THE WITNESS: Donald John Trump, New York, the Trump Organization.
THE COURT: Mr. Trump, did you say out in the hallway this morning, "This judge is a very partisan judge with a person who is very partisan sitting alongside of him, perhaps even much more partisan than he is?"
THE WITNESS: Yes.
THE COURT: To whom were you referring when you said "the person sitting alongside of him?"
THE WITNESS: You and Cohen.
THE COURT: re you sure that you didn't mean the person on the other side of me, my principal law clerk?
THE WITNESS: Yes, I am sure.
THE COURT: Have you in the past referred to her, my principal law clerk, as partisan, and/or partisan Democrat?
THE WITNESS: Maybe unfair. I think she is very biased against us. I think we've made that clear. We put

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up the picture and you didn't want that up. I think they got it off her website, however, so we didn't necessarily agree, but -- and we did take it down, Your Honor, but we have so many different sides and I believe -- and I may be wrong on this, but I believe it was one of the political groups or one of the pacts that had it up or left it up, but I didn't knowingly do that.

THE COURT: Well, I'm more interested right now in -- to whom you were referring as you can see and as everyone can see, first of all, my principal law clerk is very close to me. In fact, Ms. Habba would refer to the notes back and forth and even the conversations, but you and I, we can see each other and we're close, but not as close clearly and there is a barrier between us. So wouldn't that be at best somewhat ambiguous as to whom you are referring? Have you also -- have you -- I know I'm doing a compound question here.

MR. KISE: I was going to say am I allowed to object to the question?

THE COURT: Sure, it's a hearing.

Don't you always refer to Michael Cohen as Michael Cohen?

THE WITNESS: No.

MR. KISE: Many things, even worse than that.

MS. H BB : Yes, Your Honor. I can confirm that,

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much worse.

THE WITNESS: Much worse.

THE COURT: Would anybody else like to question the witness, either from the defense or the ttorney General?

MR. KISE: No, Your Honor.

MS. H BB : No, Your Honor.

THE COURT: The witness is excused. I have no further questions. Thank you.

THE WITNESS: Thank you, sir.

(Whereupon, the witness is excused from the witness stand.)

THE COURT: Thank you.

s the trier of fact, I find that the witness is not credible; that he was referring to my law clerk, who is principal law clerk, who is sitting much closer to me, who doesn't have a barrier, whom I believe has been accused by the defendant of being partisan or Democrat or partisan Democrat. I hereby fine you $10,000, which is on the low side, to be paid within 30 days to the Lawyer's Fund for Client Protection.

Would anybody like to say anything else?

MR. KISE: Your Honor, I would just object to that. I mean, there is one witness on the stand, the only witness on the stand. There is no evidence to the contrary other than in your mind and I don't want to go to a place where I

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don't think any of us want to go that you presupposed some ill motive on behalf of the only witness. I think that's a dangerous place to go, not just for the sanction, but also for the whole trial. I do think there is clear separation between the two.

I mean, the President was talking about the witness on the stand. I mean, we can all agree we have different views about whether it's next to you or next to you with a barrier, but he's next to you. I also think that there is -- respectfully, I think there is considerable tension caused by at least -- and I'll let Mr. Robert speak to this. It is unusual in my experience to have a law secretary, a law clerk sit on the bench. I will say that. nd so I think that may have created some of the confusion.

Ordinarily, in my experience, law clerks are in, you know, not sitting right next to the judge on the bench, but in the morning where we have a principal witness on the stand who has lied, lied, lied and as I said earlier this morning, I'm not going to go back into that speech, but that was the focal point of the examination today, that was the focal point of the animus today, that was the focal point of the questions today from the media today, so I just would ask you to reconsider.

I mean, certainly I don't want to have to file, frankly, yet another appeal and I just think if you want to,

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again, warn the defendant about the responsibilities, but I just don't think there is any clear record here.

nd in order to impose sanctions generally the record needs to be very clear. nd see, that's what just happened is kind of what is creating the issue is that like I'm talking to you and the notes are being passed to you about things and I think from a defendant standpoint, not from a lawyer standpoint, from a defendant standpoint, that creates an appearance that is uncomfortable and I think that has created some of the confusion here.

But the President has testified that that's what he said. That's what I told you before. I think that's a fair interpretation of what's said and sanctions are not granted when there is gray. Sanctions are reserved for situations where it's a very clear situation. Last week, you exercised your discretion. I didn't object to that discretion in terms of what happened with the website. We explained it, I gave you as much detail as the Court asked for and we have since complied fully. "We" meaning the clients, have since complied fully with the order. So I would just ask that we don't create that -- another issue here because I think it has further ramifications for the overall proceeding, respectfully I do.

THE COURT: Just in response, I'll just say to me, totally separate from the trial. I mean, if you wanted to

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have ramifications you can have ramifications, but I don't.
Mr. Robert?
MR. ROBERT: So, Your Honor, I will speak from my experience in New York State. It is incredibly unusual and, quite frankly, in my experience, I've never seen a situation where you're literally trying the case to two judges it would appear whereas there are notes that are constantly being passed, rulings that it would appear that the Court is in consultation with the law secretary. I think it started out less frequently. Now I would say it's almost with each ruling. There is some concern on part of defendants as a result of that.
I agree with Mr. Kise's statement about opposing any imposition of sanctions in this case, but I do think this is as good a time as any to express the defendant's concern about what would appear to be the problem or the challenge that we face and that we feel like we're trying the case before two judges and sometimes you appear to be leaning in one direction and then you'll either receive a note or there will be an eye gesture or a roll of the face and something changes and it is of significant concern to us, not just during examination of witnesses by us, examination by the ttorney General, but also in the general presentation of our case here. So I just wanted to put that on the record, sir.

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THE COURT: Okay.
Ms. Habba?
MS. H BB : I'd just like to say as I said this morning, I'm going to reiterate something. I, myself, was a law clerk. I never sat next to the judge. The judge would actually never even allow me to come in front unless to watch oral argument, but all discussions about the case were when we were researching and deciding what the order can be. I've never experienced this and I've been practicing law for quite sometime now, unfortunately, for my age, but, Your Honor, all due respect, I agree with the sentiments.
I also think that we have to remember that you made your decision on this trial before we walked in regarding liability and we've been sitting here like he said -- and, frankly, I would like to add that I've been sitting here for longer than both my cocounsel. I've been doing this with you for now a few years from the Special Proceeding and now the trial and I have had issues, numerous issues, and if we're going to make a complete record with the treatment that I've received from Ms. Greenfield from the bench, it is inappropriate. I do not like having eyes rolled, I do not like being yelled at by law clerks who did not earn the robe and I think this is completely inappropriate.
nd, quite honestly, Your Honor, with this sanction, it only furthers my belief that the influence that

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is happening from the bench is completely inappropriate and should stop. Thank you.
MR. KISE: Can I just say one more thing, Judge?
THE COURT: Sure.
MR. KISE: Thank you. I just want to go back to where I began because the record on the sanction relates to what happened outside. The testimony you received in the courtroom and neither of those present a clear picture of the supports and award of sanctions. It's clear that it's fully subject to interpretation. I think the speaker has to be taken at face value as to what he was talking about and the entirety of the conversation related to the testimony as it usually does when these press conferences occur. They usually relate to what just happened in the courtroom and what is happening in the courtroom is Michael Cohen. nd so that's top of line. Whether you and I or anyone else would agree "next to you" means next to you on the left or next to you on the right, you know, everyone has a different interpretation of it and because of that I would say that the President's interpretation is a fair interpretation. It's what he meant. He's the speaker. There is nothing in the record that would refute that, so I just again would urge the Court to reconsider the judgment of sanctions because there is just not a clear record here.
If you are concerned about future violations or a

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violation then that is within your province to direct further the defendant or any of us for that matter, but I would say this record does not support any sanction and I would urge the Court to reconsider.
THE COURT: Let me address all the comments about my consultations, I'll call them. I make the final decisions. I value input from both of my law clerks. Every judge does things differently. I don't know whether there are other judges in this courtroom or city or country have their law clerks sit up on the bench. That's how I do things and I make the final decisions.
I guess I can't consult now, you know, and look terrible, wouldn't it? So I won't. I am reconsidering.
I don't think I said this before, but the idea that the statement would refer to the witness, you know, there is somebody sitting up there alongside of him, that was a partisan Democrat whatever, that doesn't make any sense to me.
MR. KISE: I mean, it -- again, in context, it certainly does, to me, given the circumstances and given the obvious animus, the admitted animus on the witness stand that Mr. Cohen has for my client. So, again, in context, I just think it has to be taken that way.
If Your Honor would like to -- I know you want to keep the schedule moving. If you want to take it under

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advisement further and reconsider, I'll just leave that to you, but I just would ask that you take time and reconsider this. Thank you.

THE COURT: I've been thinking about it obviously for quite a while now.

Ms. Habba?

MS. H BB : The only factual thing I would like to add is the questions that have been out and I have obviously standing there have been related to Michael Cohen's testimony as well as to political matters. That has been the scope of their questions.

Ms. Greenfield was never in the front of mind or even asked about. So for what it's worth, Your Honor, I have not heard that, nor would he be responding to that. It just doesn't make sense.

THE COURT: I just need a little technical assistance. I want to see the exact quote again. I'm quoting in part, "with a person who is very partisan sitting alongside of him, perhaps even much more partisan than he is." I think the three attorneys that just spoke you've made my whole point. That's what he's worried about, that there is sitting alongside of me who is consulting with me.

MR. KISE: Respectfully, I disagree with that. The person that's sitting next to you this morning is way more partisan than -- well, I'm not saying -- I'm going to leave

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that alone, but the witness is the one that's obviously partisan. That's been the whole point of the cross examination. That's been the whole point of the morning is that he's partisan. He's a liar, he's biased, he makes money off of -- again, you know, you heard my speech. That's really the focal point.

THE COURT: I think that -- I would disagree. The focal point was he's dishonest, not that he's some sort of partisan democrat.

MR. KISE: Well, that, too. I'll take that.

THE COURT: I've reconsidered. The ruling stands. You're fined $10,000. Don't do it again or it will be worse. Let's get the witness in.

MR. ROBERT: Your Honor, just a couple of housekeeping things as we're waiting for the witness.

THE COURT: Sure.

MR. ROBERT: I just want to make sure Defendant's Exhibit 953, which is the December 12, 2018 transcript and Defendant's Exhibit 961, which was the February 28, 2019 transcript are in evidence. I don't --

MR. KISE: Your microphone.

MR. ROBERT: Can you hear me?

MS. H BB : Yes, but we can't hear him and I'm sitting right here.

MR. ROBERT: Is this better? Can you hear he now?

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THE COURT: Can you hear him in the back?

Yes, I think so. The mic's picking up.

MR. ROBERT: nd I'll speak louder.

So the housekeeping item was Defendant's Exhibit 953, which was the December 12, 2018 transcript from Judge Pauly and the Defendant's Exhibit 961, which was the February 28, 2019 deposition transcript. Just want to make sure those are in evidence and if not, to move them in now just to make things run smoother and quicker this afternoon.

MS. F HERTY: I think, Your Honor, I believe you admitted 953 over my objection and the transcript for 961 is the transcript for 961. I don't have a basis to object here.

THE COURT: They're both in evidence.

MR. ROBERT: Thank you.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: I'll remind the witness he's still under oath.

Let's proceed with the questioning.

CROSS EX MIN TION

BY MR. ROBERT:

Q Good afternoon, Mr. Cohen.

Good afternoon.

M. Cohen - Plaintiff - cross (Robert) Page 2425

Q You took an oath yesterday before you took the stand, did you not?

I did.

Q nd you promised to tell the truth, did you not?

I did.

Q nd you realize that if you don't tell the truth you're committing a lie; correct?

Correct.

Q nd that's perjury; correct?

Correct.

Q nd you remember in times past you've also taken an oath when you've testified; correct?

Correct.

Q nd you testified this morning that other times that you've testified under oath you've testified falsely; correct?

Correct.

Q nd one of those times was in the Southern District of New York; correct, sir?

Correct.

Q nd that's literally if we can see out the window next door; correct?

If you say so.

Q Well, it was in the Southern District of New York; correct?

Yes.

M. Cohen - Plaintiff - cross (Robert) Page 2426

Q You had been indicted by the United States ttorney of the Southern District of New York; correct?
Yes.
Q nd the criminal proceedings relating to that indictment was in the Southern District of New York; correct?
Yes.
Q nd you remember appearing in court for those various indictments; correct?
Correct.
Q I think it was a total of, what was it, eight or nine indictments that you faced?
Initially eight and another one for the 1001 violation, so nine.
Q So a total of nine indictments?
Correct.
Q nd the first indictments were heard before Judge Pauly; correct?
That's correct.
Q nd the second one was heard before Judge Carter; correct?
Yes.
Q nd would you agree with me, sir, that when a person is charged with a serious felony, it's serious?
THE COURT: That's a tautology.
MR. ROBERT: It's like an ustin Powers question,

M. Cohen - Plaintiff - cross (Robert) Page 2427

but I figured I'd try.
Q It's an important event in a person's life when they're charged criminally; correct?
Yes, it was.
Q Other than finding out they have cancer, it may be one of the serious things that happens to a person. Would you agree with me, sir?
There are many things.
Q Yes or no?
I don't agree with you, no.
Q So, sir, being indicted criminally -- withdrawn. In your case was it serious that you were indicted criminally?
Yes.
Q You were facing jail; correct?
Yes.
Q Prison?
Yes.
Q You actually went to prison; right?
Correct.
Q nd as part of the process a person is arraigned; correct?
Correct.
Q nd as it comes a point in time when a person is asked whether they're guilty or not guilty?

M. Cohen - Plaintiff - cross (Robert) Page 2428

Correct.
Q nd at first you pled that you were not guilty; correct?
I don't recall that, no.
Q Well, you don't recall originally entering an appearance of not guilty and then later changing it to guilty?
No.
Q Well, sir, can we agree that eventually you did plead guilty?
Yes.
Q nd, sir, the process when you were -- withdrawn. nd the first set of indictments was before Judge Pauly; correct?
Yes.
MS. F HERTY: Just to clarify, I think they were counts on an indictment. I don't think it was multiple indictments, just for clarity's sake.
Q So it was two indictments; one was for eight counts and one was for one count. We understand each other?
I understand.
MR. ROBERT: The witness and I get it, Ms. Faherty. Thank you.
Q So it was a series of two indictments; correct, sir, with nine counts?
Yes.

M. Cohen - Plaintiff - cross (Robert) Page 2429

Q nd when you went to court one day it was determined that you were going to plead guilty to those counts; correct?
When I appeared in court?
Q Yes.
Yes.
Q nd you understood the importance when you were before Judge Pauly of pleading guilty; correct?
Yes.
Q nd this was not where you walked into court and five minutes later you walked out; right?
Yes, it was.
Q So when you appeared on ugust 21, 2018 for your -- to plead guilty, you'd say that was a five-minute appearance?
Maybe not five minutes, but it wasn't all day.
Q I didn't ask you if it was all day.
So yes, it was more than five minutes.
Q It was very extensive; right?
Define "extensive."
THE COURT: Wait. Why don't you just ask him how long it was.
MR. ROBERT: I'm going to get there, Your Honor.
Q Sir, during the course of that appearance before Judge Pauly, Judge Pauly made various statements to you, did he not?
He did.
Q Including he said to you, quote, "Mr. Cohen, do you

understand, sir, that you are now under oath and that if you answer any of my questions falsely, your false or untrue answer may later be used against you in another prosecution for perjury or making a false statement." nd you responded, "I do, Your Honor." Do you remember that?

MS. F HERTY: Your Honor, I just want to note my objection for the record, which was similarly raised earlier this morning. If we are asking the witness to form legal conclusions, that is entirely improper. I am noting my objection, especially as we're throwing around the slanderous buzzword "perjury" like we did earlier. Reasserting myself, Your Honor.

MR. KISE: Your Honor --

THE COURT: Overruled.

Q nswer my question, sir.

Can you repeat it?

MR. ROBERT: Could the court reporter repeat it?

THE COURT: Read back, please.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

I do.

Q nd do you further recall Judge Pauly saying to you, quote, "My questions are intended to satisfy me that you wish to plead guilty because you are guilty and that you fully understand the consequences of your plea."

Do you remember that, sir?

I do.

Q This was a serious day; correct?

Yes.

Q nd Judge Pauly took this incredibly seriously, did he not?

You're asking me to figure out what Judge Pauly thought?

Q So you don't think Judge Pauly took the proceedings seriously? You don't know?

I'm not in a position --

MS. F HERTY: Objection.

THE COURT: Sustained. Yes or no?

Q Did you take him seriously?

sked and answered, but yes.

Q What was asked and answered? Did you take him seriously?

Yes.

THE COURT: You did ask him that and he did answer that.

Q nd, sir, during the course of those proceedings Judge Pauly asked you over 50 questions about the crimes that you are about to plead guilty to, didn't he?

I don't know the number.

Q Well, sir, I mean, I can spend the next two days going

through it, but in the document that's in evidence as Defendant's Exhibit 951, Judge Pauly asks you over 50 questions. Do you have a reason to quarrel with me when I say that?

I don't.

Q nd sir, you understood that Judge Pauly was asking you those 50 questions because he needed to satisfy himself that you were in fact guilty; correct?

I don't know what Judge Pauly was thinking.

Q Well, it's not about what he's thinking. He said to you while you were in court that day to plead guilty, quote: "My questions are intended to satisfy me that you wish to plead guilty because you are guilty and that you fully understand the consequences of your plea." If you want to look, sir, it's on page eight, lines one through five.

MS. F HERTY: Is that a question?

MR. ROBERT: It is. I asked him -- we can have the question read back, Your Honor.

THE COURT: While he's looking, sidebar, please. Sidebar or front bar I like to call it.

(Whereupon, an off-the-record discussion is held at the side bar.)

THE COURT: Read back of the last question, please.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

Q It's not about what you think Judge Pauly meant. He

explained to you why he was asking all those questions, did he not?

He did.

Q nd in response to those questions, you lied to him; true?

That's true.

Q nd then about a month or so later there are additional charges that are brought against you; correct?

That's correct.

Q nd at that point you appear before Judge Carter; correct?

Correct.

Q nd at that point you enter a guilty plea before Judge Carter; correct?

Correct.

Q nd that was for you pleading guilty to lying to Congress; correct?

Correct.

Q nd on that occasion Judge Carter asked you over 76 questions to satisfy him that you were guilty. Do you remember that?

I don't remember the number.

Q Well, do you remember that he asked you several questions to satisfy himself that you were in fact guilty?

Yes.

Q nd at that point when you gave that testimony in the Southern District of New York were you lying then?
No.
Q So you lied to Judge Pauly on ugust 21st, but you didn't lie to Judge Carter on November 29th. That's your testimony here today?
Yes.
Q Okay. nd, sir, you were then subsequently sentenced a few weeks later, were you not?
Yes.
Q nd that sentencing was on December 12, 2018; correct?
Correct.
Transcript continues on the following page....

Q nd you lied at your sentencing, didn't you?
On?
Q First, sir, did you lie at your sentencing, yes or no?
I don't know what you're referring to. I apologize.
Q Well, you don't remember that you were sentenced for criminal conduct on December 12, 2018?
I was sentenced.
Q You were sentenced to prison, correct?
Correct.
Q nd you don't know as you sit here today whether you lied that day?
t sentencing?
Q Correct.
I -- I -- I don't know what you're even referring to.
Q It is not a question of what I'm referring to. I promise you that we are going to get there, sir.
I can't answer your question.
Q So you don't know as you sit here today whether you lied to Judge Pauley at your sentencing, do you?
re you referring to when I took the -- when I accepted the sentence?
THE COURT: Mr. Cohen, it is not --
THE WITNESS: I apologize. I'm just lost with the question.
THE COURT: It seemed pretty straightforward to me.

Did you lie at the sentencing hearing?
Q Correct?
THE COURT: nd it is not a question of what he is referring to. He's asking you a question. Did you lie at the sentencing hearing?
THE WITNESS: I don't recall.
Q You don't recall whether you lied at your sentencing?
I don't recall. I have no idea what you're talking about.
Q The man that was deciding how much prison time you were going to take and you don't remember if you lied? I don't know who you keep looking at for an answer. Maybe you should look up.
I'm trying to understand your question.
MS. F HERTY: Can we avoid the commentary, Your Honor?
THE COURT: I thought it was understandable under the circumstances.
What don't you understand? Did you lie at your sentencing hearing? You know what a sentencing hearing is. You know what a lie is.
I stated I lied at the plea, but the sentencing, I stood there and I received the sentence. There -- I don't recall that there was much communication going back and forth which is why I'm asking you to clarify your question.

Q You don't remember making a statement under oath to Judge Pauley on the day he was going to sentence you to take you away from your family?
Yes. Yes. ctually, I know what you are talking about now.
Q Now, you remember?
Yes, I do.
Q nd you lied?
I did.
Q So you lied when you pled guilty, right? We know the answer already, but just tell me.
sked and answered. How many times are you going to ask me the same question.
Q I know you think you're a lawyer, but you're not.
Yes, I know that.
Q So, sir, you lied at the time -- you lied more than once in federal court, correct?
Correct.
Q When the stakes affected you personally, right?
Correct.
Q nd you mislead a federal judge?
Yes.
Q nd one of the charges that you pled guilty to, which you say today you still are guilty of, is that you lied to Congress, right?

Correct.
Q nd you pled guilty to that in December of 2018, correct?
Correct.
Q nd then, sir, you were sentenced, correct?
Yes.
Q nd you reported to prison some time thereafter, correct?
Correct.
Q So after you lied at your time that you pled guilty, you lied to Judge Pauley at your sentencing. You then lied to Congress couple of months after you lied at your sentencing, didn't you?
I don't recall.
Q Sir, this morning you were shown testimony that in February of 2019, you lied to Congress. That was the testimony. Do you remember that?
I remember it being asked.
Q Yes. nd sir, that is Defendant's Exhibit 961 in evidence and that was in February of 2019. That was less than three months after you had already pled guilty to lying to Congress. You then lied to Congress in between the time you were sentenced and going to prison, true?
What -- and what page are you on?
Q I'm not on a page. I'm asking you a question, sir.

MR. ROBERT: Your Honor, can I have the question read back, please?
THE COURT: Sure. Readback, please.
MR. ROBERT: Thank you.
(Whereupon, the requested portion of the record was read back.)
I don't know if what I had said here is a lie.
Q You testified earlier, sir, that it was a lie.
Off of that sentence.
Q So, sir, did -- the question on page 149: "Did Mr. Trump direct you or Mr. Weisselberg to inflate the numbers for his personal statement. nswer, "I'm sorry." "Did he ask me to inflate the numbers? Not that I recall, no."
That was your testimony under oath to Congress in February of 2019; yes or no?
No.
Q That's not the testimony?
That is the testimony.
Q That is --
It is not a lie.
Q That's what you said?
That is not a lie.
Q So your testimony is that Mr. Trump and Mr. Weisselberg did not tell you to inflate the numbers, correct; yes or no, sir? You can't have it both ways.

I'm sorry. Can you repeat the question?
MR. ROBERT: Your Honor, if I could have the question read back.
THE COURT: Readback, please.
(Whereupon, the requested portion of the record was read back.)
Correct. They did not tell me.
Q To inflate the numbers?
To inflate the numbers overtly.
Q Sir, that was the sworn testimony you gave to Congress, correct?
That's correct.
Q nd this morning when you were asked if that was a lie, you said, "Yes, it was a lie." That was your testimony?
Correct.
Q So you lied to Congress in February of 2019, correct? It's not that hard.
It is because --
Q Sir, yes or no?
THE COURT: ll right. Just questions.
Q Sir --
MS. F HERTY: Thank you, Your Honor.
Q February of -- let's do it the easy way. You pled guilty in December of '18, correct?
I did.

Q Can we agree that from February of '19 to December of '18 is three months?
Yes.
Q So can we agree that within three months --
THE COURT: From when to when?
MS. F HERTY: I was a little confusing for me, too.
MR. ROBERT: Even better.
Q Within two months.
What two months are you now referring to?
Q Sir, in December of 2018, you pled guilty in Judge Pauley's courtroom to a smorgasbord of crime, correct?
That's how he characterized it, yes.
Q Those were his words, Judge Pauley's, correct?
Yes.
Q Those weren't my words. Those were Judge Pauley's.
Correct.
Q One of those smorgasbord crime was lying to Congress, correct?
Correct.
Q Now we fastforward and I thank Ms. Faherty for helping me with the math. We are now two months ahead.
So two months after you plead guilty to lying to Congress -- I don't know why you keep looking to the left.
I'm staring where I want to stare, sir.
THE COURT: He can look where he wants. Come on.

Q Two months after you pled guilty to lying to Congress, before you had to report to prison, you lied to Congress again, correct?
No.
Q You didn't lie to Congress again?
Mr. Trump did not --
THE COURT: No. No. No speech.
THE WITNESS: This will go on forever unless he lets me explain.
Q I'm sure they are going to try to rehabilitate you. I don't know how.
So the answer is no.
Q The answer is no. So now you are saying when you talked earlier about the fact that that was a lie to Congress, now that's a lie?
No. I made a mistake.
Q So you made a mistake --
I made a mistake.
Q -- when you testified under oath --
Because it's --
THE COURT: Mr. Cohen. You're interrupting the lawyer. Just wait and let him finish the question.
THE WITNESS: Okay.
Q So let me get this straight. So now you're saying when you testified earlier that you lied to Congress in February of

'19 and you just testified in the last five minutes that you lied and you testified to Congress in February of '19, now you are saying, "I didn't lie when I testified to Congress in February of '19." Is that what you are saying?
Yes.
Q So now you're saying that that statement is a true statement, correct?
Correct.
Q You are now saying under oath after all of the examination of the ttorney General and all the cross-examination, you're now saying that Mr. Trump did not direct you or Mr. Weisselberg to inflate the numbers on his personal statement? Is that what you're saying, sir; yes or no?
Mr. Trump did not --
Q Yes or no, sir?
You know what?
MR. ROBERT: Your Honor, please.
THE COURT: I direct the witness to answer yes or no and the question was yes or no.
I stand with that response, "Not that I recall, no."
Q I stand with the response, "Not that I recall, no."
So you're saying that this was truthful testimony; yes or no?
Yes.
Q Okay. So Mr. Trump then never directed you to inflate

the numbers on his personal statement, correct; yes or no? Yes or no?
Correct.
MR. ROBERT: If I may have a moment, Your Honor.
THE COURT: Sure.
(Whereupon, there was a pause in the proceedings.)
MR. ROBERT: Your Honor, I have no further questions at this time, but would ask for an immediate directed verdict because the state's key witness who they base their entire case on has now testified that Mr. Trump and Mr. Weisselberg did not direct him to inflate the numbers.
We have had other bases and we will make a directed verdict motion at the end of the plaintiff's case, but I can't think of anything more appropriate now in light of this witness' testimony that the case be brought to an end.
THE COURT: Denied.
MS. F HERTY: Thank you, your Honor.
THE COURT: Ms. Faherty or anyone else, would you like to re-direct the witness?
MS. F HERTY: I would, Your Honor. Can I take two minutes to get my things together?
THE COURT: Sure. Of course.
MS. F HERTY: Thank you, Your Honor.
(Whereupon, there was a pause in the proceedings.)

MS. F HERTY: Your Honor, may I proceed?
THE COURT: Please.
REDIRECT EX MIN TION
BY MS. F HERTY:
Q Mr. Cohen, you were asked a number of questions about your sentencing in the Southern District of New York. Do you recall that?
Yes.
Q nd in connection with your sentencing in the Southern District of New York, did you and your counsel put together what's called a sentencing memo?
Yes.
Q Did you put information about your understanding of the crimes you had pled guilty to into that sentencing memo?
Yes.
Q nd did you provide information to the court about your position as to your guilty plea in that sentencing memo?
Yes.
Q Did you also information to the court about the factual circumstances surrounding your guilty pleas into that sentencing memo?
Yes.
Q Did you submit that to the court in the hopes that the court would review that information?
Yes.

Q nd accept that information from you?
Yes.
Q In connection with the -- your sentence in the Southern District of New York?
Yes.
MS. F HERTY: Your Honor, I'd like to pass forward a document I've premarked as PX 3299. I put it up, the cover page, on the screen. I'll just ask Mr. Cohen if he recognizes this document.
I do.
Q What do you recognize this to be, Mr. Cohen?
This is the sentencing memorandum on my behalf that was produced by myself and guy Petrillo of Petrillo, Klein & Boxer, my criminal attorneys at the time.
Q nd is it your understanding that this sentencing memo was, in fact, considered before the Southern District of New York pronounced sentence on you in connection with the crimes to which you pled guilty in the Southern District of New York?
Yes.
MS. F HERTY: Your Honor, I move to admit this document.
MR. ROBERT: Objection, Your Honor. It's bolstering the witness. Unless in these 33 pages it says that he's actually not guilty, it is completely irrelevant. nd I haven't read these 33 pages, but I don't think Mr.

Petrillo in the sentencing memo told Judge Pauley that the client lied and he is actually not guilty of the crime. So I don't see what the relevance of this would be.
MR. KISE: Right, Your Honor. The rule for admissibility of prior consistent statements, which is a very narrow limitation on the hearsay rule, is the statement has to be characterized as a recent fabrication or perjury. We satisfied that and the same statement was made at a time pre-dating the statement in court. So it has to be the same statement. It can't be a different statement. It can't be an inexplanatory [sic] statement.
If there are statements that say in there, "I am not guilty," "I'm pleading guilty even though I'm not guilty," that might be acceptable. We don't know because we haven't been able to go through it. nything in there about excuses why he did the crime or why he thinks the penalty is too much or why there's extenuating circumstances, that's all improper rehabilitation. It is all complete hearsay. If he said at the time, which clearly he did, because Judge Pauley would never have accepted the plea. I've been to enough sentencings.
So if he said at the time "I'm not guilty," "I'm not guilty," "I'm not guilty" like he said here today under oath, then that statement could come in as a prior consistent statement. But just general statements or

statements about, you know, why I think the punishment is too severe or why I think my circumstances are different, that's irrelevant and it is completely admissible under the prior consistent statement exception.
nd I can cite the Court to the Melendez case, 54 D2d 864. It is a First Department case. The Giordano case, 9 D2d 947. It is a Second Department case. People v. McKlean, 69 NY2d 426 which is a Court of ppeals case. I mean, I probably have 20 here, but you told me before you only need a couple, so -- but -- but unless the statement is fully consistent with what this witness has testified to here in open court, meaning he told Judge Pauley or he wrote something in court back then that says "I'm not guilty of these crimes," it cannot come in under the prior consistent statement exception.
It's just completely inadmissible. It doesn't satisfy any of the prerequisites and we haven't had a chance to go through that memorandum, but we can. We could take a few-minutes break and look, but I doubt seriously that there is anything in there that's consistent with what this witness has said today about him not being guilty because Judge Pauley never would have accepted a plea under those circumstances. It is not possible.
MS. F HERTY: He can speak for the judge now.
MR. KISE: I can speak to --

MS. F HERTY: To the extent that we need a rule that supports why this evidence is admissible, 4514, Your Honor, under the CPLR, respectfully, this is perfectly fair game, perfectly admissible and perfectly in line with the evidence these attorneys have put forth before this Court that you and your liberal discretion have permitted with regards to a sentencing of Mr. Cohen.
In fact, they moved to admit and you accepted the sentencing memo submitted by the federal government in that action. So, Your Honor, respectfully, this is appropriate and I have moved this into evidence despite the objection.
MR. KISE: Your Honor, our document was introduced as impeachment. This document is being introduced to attempt to rehabilitate an un-rehabilitatable witness and the law is just very clear on this. This is not subject to debate. So unless the statement is consistent with the testimony presented in this courtroom, consistent, not inconsistent, not maybe, not moving around it, it has to be fully consistent.
I think the example I gave when we had this issue with Mr. Larson is if the witness says today that the light is green and he's challenged that that's a recent fabrication, then you can introduce prior statements that say where the witness said under oath the light was green. Fine, but here, you have a situation where the witness is

saying on the stand the light is green and the prior statements just like with Mr. Larson are the light is red, I don't know, maybe, I'm not sure, all those things. Those aren't prior consistent statements.

This is improper bolstering with hearsay. The prior consistent statement exception to the hearsay rule is one of the narrowest exceptions that there is. So the idea they can just bring something in because we introduced a sentencing memorandum for an entirely different person, this isn't -- the law doesn't work that way. The statement must be fully consistent and the Court must make a finding specifically on the record that it is fully consistent.

So if the government would like to point out exactly where in that memorandum Mr. Cohen said, "I'm not guilty of this crime", "I'm pleading guilty even though I'm not guilty," and "I plan to lie to Judge Pauley by answering his questions with I'm guilty because I'm pleading guilty because I am," fine. But I doubt anywhere in that memorandum is a statement consistent with what this witness has testified to in this courtroom.

THE COURT: You doubt that anywhere in the memorandum is a statement --

MR. KISE: I can't imagine again. Look, I can't speak for Judge Pauley, but I can speak to all the federal sentencings I attended and I can tell you that no federal

judge that I ever encountered would take a plea from an individual who stood in front of him and said, "Yes, I'm pleading guilty just because I'm not really guilty." That's the purpose of the colloquy. That's the purpose of this as Mr. Robert pointed out, the purpose of the 55 or 58 or 78 questions. I think state judges here, my experience is the same. In fact, in New York State court, the defendant has to allocute, specifically allocute. It is even different than federal court.

THE COURT: What was the CPLR section to which you referred?

MS. F HERTY: 4514, Your Honor.

THE COURT: It is very short. Let me read it out loud because I want to read it anyway. "In addition to impeachment in the manner permitted by common law," I studied that in law school, "any party may introduce proof that any witness has made a prior statement inconsistent with his testimony if the statement was made in a writing subscribed by him or was made under oath."

MR. KISE: So now they're proceeding under the impeachment rule, the inconsistent statement? They're going to impeach their own witness with prior inconsistent statements. I mean, that's extraordinary.

MS. F HERTY: Your Honor --

MR. KISE: The only possible basis it can come in

is prior inconsistent statement. They can't impeach their own witness with prior --

THE COURT: Ms. Faherty, is that the right provision?

MS. F HERTY: It is a prior consistent statement. This counsel is trying to repeatedly impeach the witness with his statements. He has made prior consistent statements. Under the rules of evidence, that is permissible rehabilitation. That is an exception to hearsay.

THE COURT: m I correct that that's not the section you were referring to?

MS. F HERTY: I pulled the wrong section, Your Honor. My apologies.

MR. KISE: gain, Your Honor, it has to be a prior consistent statement. The case law is -- from the Court of ppeals on down is very clear on this. It can't just be any statement. It can't be a statement that's general subject matter. It can't be a statement that's inconsistent. It has to be the light was green, the light was green. It's really simple. So if he has -- if they have evidence where this witness said to Judge Pauley in that proceeding before "I'm not guilty" and that's in that sentencing memorandum, then that would be fair game; but it is not if it's just statements about why it's lenient or why I think I shouldn't

be punished, the usual --

MS. F HERTY: Your Honor, New York Guide to Evidence 8.31, a prior consistent statement: " statement of a witness made prior to his or her testimony and consistent with that testimony is admissible when offered to rebut an express or implied claim of recent fabrication and when the statement was made prior to the circumstances supporting that claim." I believe that is sufficient, Your Honor.

MR. KISE: So Your Honor --

THE COURT: Last word.

MR. KISE: First let me applaud Ms. Faherty for making something that's really mundane very interesting. I'll give her that.

MS. F HERTY: I tell you.

MR. KISE: The words that she read are exactly what we're saying. We're actually saying the same thing. They have to be prior consistent statements. They have to be the light was green, the light was green. "I'm not guilty," "I'm not guilty." It can't be "I'm not guilty," "I'm guilty." It can't be "I'm guilty, but I think I should have these extenuating circumstances and now you say I'm not guilty." They have to match up. It has to be identical. It has to match up. So I just think that's the rule.

It's not really difficult. The case law is very

clear. This is a very narrow exception, very narrow exception and they're trying to shoehorn in a whole litany of sentencing considerations, none of which I am sure tell Judge Pauley "I'm not actually guilty of these crimes."

THE COURT: Mr. Robert, quickly, if anything.

MR. ROBERT: I know when to not speak.

THE COURT: I think we're making a mountain out of a molehill. We've been spending hours and hours about the witness' credibility or lack thereof. What's sauce for the goose is sauce for the gander and I think we established that. The prosecution sentencing memorandum came in. This is coming in. I don't even know what's in it. We're arguing about --

MR. KISE: Respectfully, Your Honor, that's the whole point. In order to admit it, you have to make a finding that the statements are identical, that they match up, that they're both consistent. The light was green the, light was green. That's the requisite finding under the case law.

MR. ROBERT: Maybe the solution is if the government wants to show us in here where he says, "I'm really not guilty," we will look at it.

MS. H BB : I think they should pull out a specific portion. I think if it's allowed in, it should be a specific portion as I did, not the entirety. That's what

she objected to. That was her own objection to my question.

THE COURT: Let's go back a step. It is an out-of-court statement, right? re you introducing it to prove the truth of its contents?

MS. F HERTY: Sorry, Your Honor?

THE COURT: re you introducing it to prove the truth of its contents?

MS. F HERTY: No.

THE COURT: Then what are you introducing it for?

MS. F HERTY: To rebut the very testimony that they solicited on cross-examination which --

MR. KISE: No. She's introducing it to prove the truth of its contents meaning on a prior date when he didn't have a reason to -- recent fabrication, that he made a statement fully consistent, identical statement, an identical statement. That's the purpose of the prior consistent statement exception to the hearsay rule.

So yes, it is absolutely being offered to prove the truth of the matter asserted. The matter asserted is the contents of the statement, that his statement then and his statement now are fully consistent. So you can't introduce a prior consistent statement for any other reason than to demonstrate that the two are identical.

So it is definitely being offered to prove the truth of the matter asserted and the cases I've

cited -- again, I can go on with many more. I know. This is a very narrow exception, very narrow.

THE COURT: nything else to say before I rule one way or the other? I have a coin here I can flip, you know.

MS. F HERTY: I think you have the complete wherewithal to understand the basis for having this document in front of you, Your Honor. I think you understand the speechifying that has occurred unnecessarily. I would like to move along from this point. Mr. Cohen has testified as to what this document is, what information was contained in the sentencing memo, and how, if at all, it impacted sentencing.

THE COURT: I don't remember him testifying to what is in this sentencing memo.

MS. H BB : Thank you, Your Honor.

MR. KISE: That's the point.

MS. F HERTY: Let's go through it then. Your Honor, I think if I have to go through it, it is a waste of this Court's time.

MR. KISE: No. No.

MS. H BB : That's how this works.

MS. F HERTY: It is just such a waste of the circus show that this has divulged into.

MR. KISE: The rules and the case law from the Court of ppeals on down are a waste of time? I realize

that is the government's position. That's been their position with President Trump's case from the beginning, that the rules don't apply, the law doesn't apply, nothing applies, COVID rules don't apply, everything else doesn't apply.

MS. F HERTY: Mr. Kise.

MR. KISE: No, you had your say. So the point is there are laws and there are rules. If they want to make a specific proffer to the Court that there are specific statements that are identical, the light was green, the light was green and they're identical and the Court finds that these specific statements are identical, then they can offer to introduce those. But to just throw the memo over the top and say, "I want that in there" because I know where this is headed. I've been down this road before. Born at night, but not last night.

What they'll do is they'll throw it in there and then later pull out something in a memo and say, "Look. Look. Here. This is in evidence now." No. No. It doesn't operate that way, prior consistent statement exception. It is very, very, very, very narrow. This is not a speech. This is a recitation of the law.

MS. H BB : Your Honor, briefly. s we know, Ms. Faherty liked to jump up when I was getting up and asked me what statement I was trying to put in, not an entire

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document, not even an entire article. I would like to know what statement she has in this 33 pages, please. Where is it referenced?

MS. F HERTY: "Mr. Cohen, in the sentencing memo on page three, paragraph C, is there a subtopic heading, "The Nature of the Offense Conduct?" "Yes."

MS. H BB : What?

MR. ROBERT: What?

MS. H BB : We must be looking at --

MS. F HERTY: Page 13, paragraph C.

MR. KISE: Should we do this in the presence of the witness line by line.

MS. H BB : Perhaps not.

MS. F HERTY: Which way would you like it, Counsel?

MR. KISE: With the witness not here and we can go through it, the way it is contemplated.

THE COURT: Hold on.

(Continued on the next page.)

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THE COURT: Ms. Faherty, I don't know what's in here. You'll have to go through it.

MS. F HERTY: Your Honor, if I may?

THE COURT: If you want to not --

MS. F HERTY: -- on the issue and I could submit a letter. It might be more helpful to the Court because Counsel I don't think will actually allow me to get through this and I think we can just move it along.

THE COURT: Okay. Sure.

MR. KISE: That's fine if they want to submit something later after the witness.

MS. F HERTY: Okay.

Q Mr. Cohen --

THE COURT: By the way, I don't want spend to much time on this. We keep micromanaging these little pieces of a big case.

MR. KISE: That's why we're here.

MS. H BB : He just admitted he didn't tell him to do what he said he did. We're done. We can move on.

THE COURT: You reserve the right to put it in a memo why this should come in.

Q Mr. Cohen, you were asked on cross about numerous positive statements that you made about Donald J. Trump. Do you recall that?

I do.

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Q Did that end at some point?

Yes.

Q When?

It ended in -- well, it ended with my interview with George Stephanopoulos where I stated that my wife, my daughter, my son have my first loyalty, as well as my country, and that I would not be the villain of his story.

Q Do you recall about when that was?

2018, maybe 2019.

Q nd can we pull up Defendant's Exhibit D 961 and turn to page 149?

Yes.

Q You were asked a number of questions on this particular page with regard to your prior testimony. Is that fair, Mr. Cohen?

Correct.

Q Ms. Habba asked you certain questions; correct? You recall that?

Yes-or-no question, yes.

Q Mr. Robert asked you a number of questions; fair?

Yes.

Q I believe I heard you wanted to offer an explanation that you may not have been permitted to fully testify on.

Would you like to provide an explanation that you were not previously able to provide in response to Counsel's

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questions earlier on this particular document and this particular page?

MR. KISE: Objection. Calls for a narrative. She needs to ask a specific question about what it is she is seeking. This is a witness on direct, so she needs to ask a specific questions, but appropriate questions, not a leading question and not a question that's open-ended. Just tell us what you know. It needs to be a specific question.

THE COURT: Interesting issue. I don't think it does. I think you can ask the witness is there anything else you need to tell us or want to tell us.

So answer the question, please.

When I was asked the question did he ask me to inflate the numbers, he did not specifically state "Michael, go inflate the numbers." s I stated in my books, and I've stated publicly, Donald Trump speaks like a mob boss and what he does is he tells you what he wants without specifically telling you. So when he said to me "I'm worth more than five million. I'm actually worth maybe six, maybe seven, could be eight," we understood what he wanted.

So when they asked me did Mr. Trump direct you or Mr. Weisselberg to inflate the numbers for his personal statement and I stated "no, not that I recall, no," that's what I was referring to.

Then, if you continue down as opposed to just cherry

picking the lines, "did overhear any conversations with llen Weisselberg" -- "with Mr. Trump and llen Weisselberg?"

"No."

The statements that I heard from Mr. Trump directing me and llen were he wanted to rise in the Forbes 400 list and he directed that llen and I go and meet with the writer of Forbes and give her the information, explain to her the value of the assets, which we already -- I think we're missing a page.

Q It's on the screen, Mr. Cohen.

-- were inflated.

"So the value of the assets on those personal financial statements were to your understanding inflated?"

My answer, "yes."

It then goes on, "Okay. Now, if those were submitted to an insurance firm or a bank and they were sworn to, might that be evidence of a crime?" I stated "I actually pled guilty to it."

Q Was that the clarification you wanted to add to your answer that you weren't permitted to answer before?

Yes.

MS. F HERTY: No further questions, Your Honor. Thank you, Mr. Cohen.

THE COURT: ny re-recross?

MR. KISE: Give us one minute, Your Honor.

(Whereupon, there is a pause in the proceedings.)

MR. ROBERT: Your Honor, we have no further questions. But, once again, I renew my request for a directed verdict again because Mr. Cohen in addition to now admitting to perjury several times, unequivocally has said that Mr. Trump and Mr. Weisselberg did not direct him to inflate the numbers and even this purported redirect examination has done nothing to change the facts that the government's key witness has fallen flat on his face and there is no way they can make out a prima facie case.

So, again, at the close of the evidence in the plaintiff's case we'll make a formal motion for directed verdict, but at this point I once again must strenuously request that this Court grant relief and end this case once and for all on behalf of all defendants, sir.

THE COURT: bsolutely denied. This case has evidence, credible or not, all over the place. There is a 200-page complaint, there is a 35-page summary judgment decision referring all sorts of evidence.

The fact that one witness, who I don't necessarily consider from what I've seen to be a key witness, I don't think there is a key witness, who said something which he has now -- however you want to categorize it, taken back. That's absurd, Mr. Robert. I mean, you and I respect each other and I -- you're a very good lawyer, but no way, no how this case is being dismissed because of an equivocal --

arguably equivocal statement by one witness who I don't consider the key witness. nd there is enough evidence in this case to fill this courtroom. So denied, but you can make it again at the end of plaintiff's case.

MR. ROBERT: We will. Thank you, sir.

THE COURT: Since I'm denying it now, I don't think it's going to change, although actually all the other evidence presented, I assume. So I understand where it's coming from, but I hope you understand where I'm coming from.

MR. ROBERT: Thank you, sir.

THE COURT: ll right. Witness is excused. Thank you.

(Whereupon, the witness is excused from the witness stand.)

THE COURT: ll right. Counsel are going to stay, but everyone else, 10:00 a.m. tomorrow. Have a good rest of the day. That's it for the day, except for counsel.

(Whereupon, the trial proceedings are adjourned to October 26, 2023 at 10:00 a.m.)

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In The Matter Of:

NYS ttorney General v.
Donald Trump, et al.

Michael Holl, Sherri Dillon
October 26, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

Original File G vs Trump-102623.txt

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

60 Centre Street
New York, New York 10013
October 26, 2023

B E F O R E:

HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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Senior Court Reporters

THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Hello, everybody. I don't run and up down these steps anymore. I don't have the energy to do so. I don't bow down because I'll probably trip and break my neck.

Okay. We're up to -- I understand there is five minutes or so of housekeeping on the record?

MR. KISE: Two minor things -- well, one minor and one a record item.

We did receive the ttorney General's filings as to Ivanka Trump last night. It was 11:30, so given --

THE COURT: Sauce for the goose is sauce for the gander as we say.

MR. KISE: So the 12 hours or so that we have given -- can we have until 2:15? Can we have until the end of the lunch break? I mean, we are on trial.

THE COURT: Chris, you ask so much, but okay.

MR. KISE: Thank you, Judge.

The second item -- I mean, if we can do it sooner we will. I just don't -- we're in process right now and

it's -- the schedule is kind of cramped.

The second is I would just ask Your Honor -- and I'm just going to make a brief record and a brief plea for Your Honor to reconsider the sanction order of yesterday, two parts to that.

Number one, I will say I went back and looked at the entirety of the video and will say to the Court the premise is still not supported by any evidence. The only testimony in the record is that when the statement was made he meant Michael Cohen. The review of the statement itself, at least in my mind, and this is where I pointed out to the Court yesterday and I went back to make sure that my recollection was correct, that the review of the statement does not support the sanction either.

President Trump stated "very partisan judge" and quote, "With a person who is very partisan sitting alongside of him, perhaps even more partisan than he is."

nd the very next sentence after that is "so we are doing very well. He's a totally discredited witness."

Now, I'm not going to offer a grammar lesson here, but to me the -- the "he" in the immediately subsequent sentences is referring to the person in the immediately preceding sentence. That's how I certainly took it at the time.

In fact, if you watch the video, I'm standing there

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sort of stone faced. I think -- I'm not going to comment on that. I think -- and if I thought there was a violation of an order I probably would have reacted. But in all events, sanctions must be based on clear conduct. This wasn't clear conduct. The conduct is not -- is susceptible to an innocent explanation and for that reason I would ask the Court to reconsider.

Secondly, though, and I think as importantly, if not more importantly, accepting the Court's premise that it was in fact a reference to your law secretary, I think that raises even more problematic considerations for the Court to take into account. These are significant First mendment considerations when we're talking about the kind of statement that was made yesterday. gain, I don't accept -- and President Trump as you can tell from his testimony doesn't accept the premise that in fact he was referring to anyone other than Michael Cohen. But to the extent that the Court is saying that he does -- he was, then barring a defendant from commenting on his perception of fairness in a proceeding is simply, you know, based on his own observations is not, respectfully, constitutional.

I mean, these perceptions of the defendant are perceptions of what he is observing in open court. The case itself it's fair to say -- I mean, we can debate whether it's fully political or somewhat political, but in any

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event, it's political.

The ttorney General has made numerous public comments both prior to bringing the case and during the case about getting Trump and a political agenda here and the defendant is the leading candidate it seems even in New York now for the presidency of the United States. So he is entitled to comment even beyond what a normal event would be. I mean, the restrictions on political speech become much more -- much greater consideration. So the notion that he cannot comment on the fairness of a proceeding with even a general reference to what he sees and perceives legitimately as bias is constitutionally infirmed.

I mean, this violates the First mendment. His perception is based on him sitting here in the courtroom, watching your law secretary make comments to you, pass notes to you. He's -- he said to me numerous times when I'm arguing because when I'm arguing I'm focused on the witness or on yourself, but he's always said every time you get up to argue the law secretary is writing notes advocating. These are his perceptions.

You, Your Honor, may disagree with those perceptions, but these are his perceptions. He is a defendant in a proceeding where his business is being attacked and he's entitled to comment fairly on what he perceives in open court. Your law secretary's presence on

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the bench is open and public. That's a point that he has made and I have to echo anyone can observe that. So him commenting on that fact is well within the bounds of his First mendment rights. Him commenting on the bias that may result from that is well within his First mendment rights. He did not name anyone yesterday. gain, he was talking about Michael Cohen. But accepting the Court's premise there was no one named and all defendants in any proceeding have a right to comment on what they believe is a perceived lack of fairness or on some impediment to receiving a complete and full, fair trial.

We don't have a jury. You've heard him comment on that before. The system doesn't allow him the jury under the circumstances and so that's also problematic and he's free to comment on that as well. But limiting a defendant's right to comment appropriately on observations that are made in open court, you know, again, I will note that everyone can observe your law secretary on the bench and when the photographers that you have let in here come in they're photographing the bench. There is no attempt to shield that public fact from the photographers that the media is covering this on a daily basis, albeit a little less today, but on a daily basis.

So this is open, public and the defendant has a First mendment right to comment on what he believes and

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perceives I think legitimately from his perspective as a potential source of bias and limiting that runs afoul of the First mendment in general with respect to defendants, but also even more under the heightened scrutiny of restricting and placing prior restraints on political speech of a presidential candidate.

There was no reference to anyone by name, there was nothing more than an observation about proximity and bias. Both of those are -- fall well within the fair bounds of the First mendment comment, again, for any defendant but certainly for a defendant who is a candidate for President of the United States.

So, respectfully, Your Honor, I'd ask you to reconsider your order, one, because the President as he testified, the only evidence was referring to Michael Cohen; and two, because as stated the order is constitutionally infirmed.

To the extent, Your Honor intends to proceed then with the order and affirm the order, then I would ask respectfully that you reduce it to writing so that it can be appealed and I would also ask that at some point in the proceedings during a break that we be allowed since photographers have been in here to photograph the empty bench so the ppellate Court has a record of exactly what the setting is with where you're sitting, where Michael

Cohen would have been sitting, where your law secretaries are sitting so that there is a full record there. I hope that that won't be necessary. I think that -- I know that President Trump understands your order and to the extent you want to reaffirm that order with him when he's back here that's certainly acceptable and appropriate to continue to admonish the defendant of the bound of the order, but I don't think that the order entered yesterday survives constitutional scrutiny, respectfully. Thank you, Judge.

MR. MER: Your Honor?

THE COURT: I was going to ask the plaintiff if any Counsel wants to say anything.

MR. KISE: One thing I would also point out before Mr. mer speaks. My understanding of the CDC guidelines and based on their representations is individuals who are returning after five days should be wearing masks. gain, no one seems to be concerned about this on the ttorney General's side and it was represented to us that was going to happen and apparently it was not.

MR. MER: That's not true. The CDC guidelines say if you test negative over a 48-hour period you no longer have to wear a mask and I'm within the guidelines, so I choose not to wear a mask.

THE COURT: Okay. nything else you want to say?

MR. MER: Yes. I want to address Mr. Kise's

arguments he makes. Two points, Your Honor. The first point is request for you to reconsider the sanction order. I would just say I haven't heard anything that justifies granting reconsideration. Your Honor put Mr. Trump on the stand under oath. You heard his testimony, you assessed his credibility that's within your purview and you made your decision which I think should stand. Nothing new or different has been brought to this Court's attention as far as I could tell.

With respect to Mr. Kise's second argument, it seems to be a challenge to this Court's gag order. I would suggest, Your Honor, that there is absolutely nothing improper and everything appropriate with your gag order. The First mendment has limits, Your Honor, carefully narrow tailored the gag order to address the safety of your staff. You did not prevent Mr. Trump from attacking or criticizing you. You did not limit Mr. Trump from criticizing the ttorney General, at least one other judge. federal judge in Washington, D.C. has issued a similar order to protect her staff. That gag order is appropriate and based on the assumption of Mr. Kise's second argument, which is that Mr. Trump was referring to your law -- principal law clerk, he is asking that you vacate your gag order. We think there is no reason for you to do so and that gag order is perfectly appropriate.

nd I would say his second argument suggests that Mr. Trump doesn't believe that your gag order is valid in the first place and has bearing on then whether Mr. Trump took it seriously and who he was referring to during his press conference.

I will also say if you watch the video of his press conference he was asked multiple times by the press who he was referring to and he refused to answer that question, so that's all I have to say. Thank you, Your Honor.

MR. KISE: Your Honor, one, so I don't know where to begin. First of all, I'm not sure that the ttorney General has a dog in this hunt, but I'll leave that to you, number one.

Two, the ttorney General is oversimplifying the constitutional analysis, not surprisingly, because doing that favors their blurring of the lines position. So irrespective of whether we believe the gag order is constitutional facially, certainly there is a distinct difference between facial unconstitutionality and as applied unconstitutionality.

The argument that I'm presenting to Your Honor as a basis for reconsideration relates to irrespective of whether the gag order itself is constitutional. The question that hasn't been raised and need not be reached. The question is as applied, your application of that order under these

circumstances, whether that's constitutional and my argument is that it is not because it is impinging upon the right of any defendant to comment on anything that happens in open court in full view of anyone, the media, anyone in this room that impacts the adjudication of the proceeding. It's not naming anyone, it's not a post on a website, it's not a disparaging comment.

nd setting aside whether those distinctions have constitutional meaning here we're talking about a very narrow and specific question as applied to the comments that were made assuming, again, that he was speaking about Mr. Cohen -- about your law secretary and not Mr. Cohen. nd, again, the ttorney General's observations about the video are a non-sequitur -- the other coverage. Because Mr. Trump was asked immediately before that were you talking about the judge's law clerk? Did you violate the order? He affirmatively said no. The fact that he didn't answer, like, 50 more questions about the same subject doesn't prevent anything other than he wasn't going to answer questions about the same subject. But here you've got a true significant, substantial impingement upon the constitutional rights of any defendant. nd here, the First mendment rights to political speech about observations, his observations of what's taking place in open court, whether one can agree or disagree, I think that he has a legitimate

basis to raise these arguments because he is seeing as he's told me on a regular basis head nods, eye rolls, notes being passed, head shaking, you know, comments on arguments that I'm making. gain, usually when I'm making arguments, I'm doing what I'm doing now. I'm not paying attention to anybody else, so I don't see those things necessarily but the client does, the defendant does.

He's got every right to comment on -- just like if anything else were going on in the courtroom, any other public activity were taking place in the courtroom that might impact the adjudication of the proceeding. So he has a right to comment on that and as applied the order impinges upon that right. ny defendant has this right. nd, again, there's been no attempt to otherwise shield anyone from public notoriety. The cameras that come into the courtroom film everyone that's here and everyone's aware of that. There's been no attempt to shield anyone on the bench or anyone else in the room from those cameras.

So I'm not sure that there is a meaningful distinction between that sort of notoriety and a comment by a defendant that hey, I'm not getting a fair trial because I'm observing that something's going on that's going to prevent me from getting a fair trial. It's no different from him saying I'm not entitled to a jury under this statute and that's wrong. That's not fair, that's not

right.

nd just because he's a candidate for President of the United States or, in fact, maybe because he's a candidate for President of the United States, that doesn't really alter anyone's ability to impinge on those rights. He has a right to make fair comment. nd again, I don't -- without getting into the issue of whether the overall gag order is constitutional or otherwise, as applied under this particular circumstance, it clearly -- I believe respectfully is not and that's the basis for the reconsideration. Thank you.

THE COURT: Briefly?

MR. MER: Very briefly, Your Honor. I know a facial challenge when I hear one. That was a facial challenge, but it doesn't matter whether it's a facial challenge or a challenge that's applied. We think it's appropriate under the circumstances and we don't see any reason why Your Honor should reconsider or change the sanction order or revisit the gag order. Thank you.

THE COURT: Well, I will speak from notes, but they're my notes.

Mr. Kise, you should have seen me in law school. I was a real defender of the First mendment. Justice is black and Douglas is absolutist, but as we all learn it has limits. nybody can run for president. I am going to

protect my staff. There are basically about three people. I don't think that's impinging on somebody's First mendment rights to protect my staff.

I'll reconsider for -- because I haven't seen the video or even a full transcript, so let me see that and I think it may -- based on what was said, may work both ways.

In terms of -- Mr. Kise, I think a few times you said nobody was named. I certainly remember from law school or cases you can be liable for defamation even though you don't use the name of the person if it's clear to whom you're referring. Of course, that's an issue, but that's a factual issue and I'm the finder of fact.

I think I said this yesterday, but I've been thinking about it since. The irony here, the great irony is on the one hand you're saying Mr. Trump was not referring to my law clerk and then you make this whole big deal "but she is sitting right near me, you're passing notes, you're talking," which I said yesterday I have an absolute right to do. I think several members of defense team have said that's not how it's done, I haven't seen that. Well, this is how I do it and I think it's certainly within my discretion and my purview and I think it makes me a better judge that I listen to other opinions. But I'll stress again two years of a former Trump's term, I am the decider. Nobody knows everything, somebody has to decide.

I do not consider this trial political at all. I understand the points or arguments about history or who said what to me. It's not a political trial. It's an Executive Law -- Judiciary Law 6312, whatever the law is and that's how I'm conducting it, that's how I'm deciding it. Just what was said doesn't violate the law and maybe finally, Mr. Kise, you asked that I reduce this to a writing, etc. so you can appeal. You can appeal the transcript. I did and I believe it's uploaded. Just confirmed it's been uploaded.

MR. KISE: That's fine. I didn't see that. I was working on the 11:30 filing from the G, so I must have missed that.

THE COURT: It just happened, like, minutes before.

MR. KISE: ll right. Thank you.

THE COURT: nd I'll do this. I'll make you a deal. I'll reconsider the sanctions decision because I do want to see that the clip or the transcript. If you read the opinion and you'll see more reasons why I did what I did than I was able to enunciate yesterday.

MR. KISE: I'll certainly read it. Yes, Your Honor, absolutely.

THE COURT: nd that's it. I'll leave it at that. I'll reconsider, but I made the decision and unless I say otherwise, the decision stands.

Okay. That's it for now, yes?

MS. F HERTY: One more point, Your Honor.
THE COURT: Sure.
MS. F HERTY: s Counsel has already recognized we did have a filing that we e-mailed to the Court last night. However, we did not file it because in connection with that service of the papers there were certain exhibits that defendants have marked as confidential. In an abundance of caution, we didn't want to violate the protective order that is in place governing designated confidential materials.
We asked permission to be able to file those materials. I respectfully request if Your Honor can give us that direction to do so and I'll make sure that those documents are filed in the public docket immediately.
THE COURT: re you looking for permission or direction?
MR. KISE: Well, once we see what they are.
MS. F HERTY: You have them. We e-mailed them last night. You have them.
MR. KISE: I know, but I do get up at 5:30. Between the hours -- between the hours of 10:30 and 5:30, I sleep.
THE COURT: Of course. You can do whatever you want in that regard.
MS. F HERTY: Thank you, Your Honor.
THE COURT: Sure. nd by the way, to correct the

record of sorts, I do think defendants have often filed papers rather late, maybe not 11, but 9 o'clock.
MR. KISE: I'm still awake at 9:00.
MR. MER: I think you have a few other people who could read the papers too.
THE COURT: ll right. Let's just move on.
Would you like to call your next witness, plaintiff?
MR. MER: Yes, Your Honor.
People call Michael Holl to the stand.
MR. ROBERT: We were told that Ms. Dillon was the first witness this morning.
MR. MER: No.
MR. KISE: Ms. Dillon was supposed to be the witness yesterday afternoon and then she went home.
MS. F HERTY: Ms. Dillon is here. Mr. Holl will be a very quick witness. Based on the witness's schedules we are putting Mr. Holl first so that we could get him out. He is -- and if I were confusing in explaining this to Counsel, please accept my sincere apologies. Both witnesses will be on today. We just need to proceed with Mr. Holl first.
nd, again, my apologies to the Court, my apologies to Counsel. I thought I was clear, but if I was not, I'm sorry.
MR. ROBERT: Well, first of all, we were under the

impression it was going to be Ms. Dillon followed by Mr. Flores' continuation.
MS. F HERTY: No.
MR. ROBERT: I even -- that's what we were told.
MS. GREENFIELD: Yesterday, with Ms. Habba, she indicated it was going to be Mr. Holl and then Ms. Dillon.
MS. F HERTY: It's on our list, as well.
MR. ROBERT: I understand. I was under a different assumption because I actually think that Mr. Flores was planning to be here this afternoon with his counsel because they were told to be here at 2:15, I think.
MS. F HERTY: Later in the afternoon.
MR. ROBERT: So you're going to have three witnesses?
MS. F HERTY: Mr. Holl will be a very brief witness.
MR. ROBERT: I understand. Is he going to appear on our case in chief if we want him? Is he a New York resident?
MS. F HERTY: I have no idea how you're proceeding with your case.
MR. MER: We did give you notice that we were calling him. Really?
MS. F HERTY: You are not always sandbagged, sir. I am apologetic that there was confusion. I'm trying to be

clear with the schedule. We have stood up with the Court's principal law clerk, Ms. Greenfield, to discuss scheduling with defense counsel present. We have identified our list for Counsel and I'm sure you would agree that the past few days have been a bit chaotic. I have had no reasonable apprisal of the defendant's ability to calculate their own timing. So respectfully, this is the best we can do and this is how we are proceeding, sir.
MR. ROBERT: Your Honor, it's the judge's determination, not yours, Ms. Faherty, but I appreciate your apology and I accept it. I'm not accusing you of anything. I'm just talking as a matter of practice and procedure. If you're going to call a witness then we then have to cross examine that witness we are entitled to notice of it. We were told we were starting with Ms. Dillon.
MR. MER: We were just told that Ms. Habba was advised that we were calling Mr. Holl first this morning, so you did have notice.
THE COURT: That was my understanding was always it would be Holl, then Dillon.
MR. ROBERT: Okay. Well, then, I would ask that the ttorney General make all accommodations to have him reappear if we need him.
MR. MER: No. We're calling the witness, we gave him notice. If they want to cross examine him, their chance

is after our direct, period.
THE COURT: If you need a little time after the direct.
MR. ROBERT: I just want to put my objection on the record. nd talk about sandbagging. Ms. Faherty started by an apology, now Mr. mer is yelling. I don't know what their game is, but we'll proceed and our objection is on the record.
THE COURT: Mr. mer, stop yelling.
MR. MER: I don't think I was, Your Honor.
THE COURT: If you weren't, then don't start.
ll right. I hope this has much to do about nothing. I believe you were notified through Ms. Habba.
Let's get Mr. Holl.
Get the witness, please.
Transcript continues on the following page....

THE OFFICER: Witness entering.
M I C H E L H O L L, a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:
THE COURT OFFICER: State your name and either home or business address on the record.
THE WITNESS: Michael Holl. nd the business address is 8 Forest Park Drive, Farmington, Connecticut.
THE COURT: Please proceed.
MR. MER: Thank you, Your Honor.
DIRECT EX MIN TION
BY MR. MER:
Q Good afternoon, Mr. Holl. Can you, please, describe for us your educational background for us after high school?
I have a four years bachelor's degree of psychology from Eastern Connecticut State University.
Q nd when did you receive that degree?
In 1995.
Q re you currently employed?
I am, yes.
Q nd who is your employer?
HCC Global.
Q nd if we -- is that related to Tokio Marine?
It is.
Q nd if we refer to your employer as HCC, is that okay?

Yes.
Q nd how long have you worked at HCC?
little over 20 years.
Q Prior to starting at HCC, did you have any other employment in the insurance industry?
Yes.
Q Can you describe that for us, please?
Sure. I worked for the Hartford out of college for about six months and then I worked for Chubb for about five years.
Q In what area did you work for the Hartford and Chubb?
For Hartford, I was in the claims unit and then at Chubb, I was in the D&O claims unit.
Q What does D&O stand for?
Directors and officers liability.
Q Can you just describe for the Court very briefly what that line of insurance covers?
Sure. It covers exactly that. The directors on the board of companies and the officers if they're named in litigation.
Q nd is that a liability cover?
Yes.
Q Focusing on your time at HCC, what department or division did you start in?
I started in the claims department.

Q Just briefly, what were your responsibilities in the claim department?
So I would adjust D&O claims.
Q How long did you work in the claims department?
bout three years.
Q nd where did you move to next?
I moved to the public company D&O update writing unit.
Q Just contrast for us what underwriting means as opposed to claims.
Sure. So now we're looking at the business and determining whether we want to provide insurance cover. So you're underwriting the business and writing policies for companies.
Q nd again, I think you said you were in the D&O area of the underwriting group; is that right?
Yes.
Q nd what was your title when you moved into the underwriting group?
Underwriter.
Q nd have you retained that title to date?
I have.
Q nd you mentioned public company. So what does that entail?
So it means that they're publicly-traded and their financials on public record where you can go -- anyone in the

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public can go find them.
Q Did you in that group ever have occasion to underwrite private companies?
Yes.
Q nd under what circumstances would you as a member of the public company D&O group be underwriting a private company?
Generally, if it's a complex risk or a risk that most private company underwriters or units would just outright deny.
Q I'd like to focus only the period of 2015 to 2018. Could you tell us who you reported to during that period?
My manager was Tom Pettit.
Q Did you have any dotted line reporting relationship with anyone during that period of time?
Yes.
Q Who?
ndy Stone.
Q nd who was Mr. Stone?
ndy is the co-founder and president of HCC.
Q Do you have any authority level for underwriting?
No.
Q Who would you have to seek approval for?
THE COURT: I doubt they can hear you in the back. I think it's your voice is going.
MR. MER: It is.
Q Who would you have to seek approval for to underwrite?

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MR. KISE: I can't hear him.
THE COURT: We've got to do something here.
MR. MER: Short break.
THE COURT: Sure, short break.
MR. KISE: I don't think it's Mr. mer. We had this problem yesterday with people with very loud voices as you know.
THE COURT: I think it's half and half, his voice and the system.
MR. KISE: Maybe.
Q So who would you seek approval for for underwriting?
Who would I seek it from?
THE COURT: From, not for, from.
Q Yes, from. Yes.
I would seek it from either Tom Pettit or ndy Stone.
MR. MER: I'd like to hand the witness a document for identification with the number Plaintiff's Exhibit 587.
Q Do you recognize this as a series of e-mails to you and from you?
Yes, I do.
MR. MER: Your Honor, I ask this be admitted into evidence.
THE COURT: Hearing no objection, it's in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 587.)

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Q Let me ask you to look at page two and direct your attention to the e-mail actually begins on the bottom of page one and carries over to page two.
That's an e-mail from you to Mr. Stone, correct?
Yes.
Q nd at this point in time, is Mr. Stone -- what was his title again at this point in time?
President.
THE COURT: Mr. mer, I think the microphone might work much better now.
MS. GREENFIELD: He raised the volume if you want to try it.
Q You wrote that you got a call from John Vanasco at ON. Who is John Vanasco?
He is a broker for on.
Q What does that mean to be a broker?
So a broker would have a relationship with the companies that we're underwriting.
Q nd what role did you understand him to be playing in connection with the Trump Organization and the inquiry that he made?
I would have understood that he's the broker of record for the Trump Organization.
Q I'm intrigued by the next line, so I'll just ask you what did you mean, "a nice, juicy one"?

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I mean, Donald Trump had just been elected President of the United States, so it is not an opportunity you get to look at very often.
Q What do you recall learning about this potential business opportunity from your conversation with Mr. Vanasco?
So my understanding from him was that they -- upon the election, they were looking for additional D&O cover. D&O is written in towers and they wanted more capacity.
Q You write, "Currently, the primary 5 million is with Everest and those loss runs are clean." What did you mean by that?
Well, it means that Everest is the -- would be the only carrier on and is the primary carrier and that there are no losses. They haven't written any losses on any of the policies they've written for Trump Organization.
Q The e-mail mentions a few lines down, "It is a 2/17, but they are looking for midterm additional limits (5x5) now." If you could decipher that for us.
It is referring to the expiration date. So this e-mail is in December. They're -- they're not looking just for the coverage once it renews on February 17th. They're looking to put additional capacity in place now and the 5x5 would be $5 million in D&O limit over the five that Everest is providing.
Q nd that would be from the date of the -- in December until the renewal in February; is that right?

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Yes. From whenever they choose to bind that coverage up through that February 17th renewal date.
Q Your e-mail says, "Trump Organization Private Company," so you understood -- did you understand that the Trump Organization was a private company as opposed to a public company?
Yes, I did.
Q I think you explained to us that there were circumstances under which you in the public company group would get asked to look at a private company placement. Is this one of those circumstances?
Yes, it is.
Q When you -- when this opportunity came to you from on, did you believe you had the necessary background and experience to handle assessing this risk from an underwriting standpoint?
I think so.
Q If we scroll up to the e-mail above this one, which is from Mr. Stone to you, what did you understand Mr. Stone to be conveying to you in this reply e-mail?
He was basically giving approval to quote the additional capacity they were looking for and the pricing for that being $40,000 and that to put a prior impending litigation exclusion on it, "PP lit X."
Q So when he says, "I think a 5x5 on this until 2/17 is

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okay," what did you understand he was conveying to you in terms of what HCC's line would be for this stub period?
What our line would be? I don't know what you mean.
Q How much coverage was he conveying to you was okay for HCC to write?
Yeah. We were okay writing 5 million X of 5 million.
Q The very last line of Mr. Stone's e-mail says, "We will need to review financials for the renewal."
What did you understand him to mean by that?
That it's standard practice in any company we look at, that we would want to see the financials that we're not going to see them prior to the renewal, but that we're gonna want to see them as of that February 17th renewal date rolled around.
Q Can you explain to us why that was standard practice?
Why it's standard practice? I mean, every account that we underwrite, we generally try to get a look at the financials for those companies to understand what their financial situation is.
Q Is that relevant to assessing risk?
It is.
Q Why is that?
It's relevant because you're trying to find out if they're a successful company and if they're profitable and if they are in debt, that they can't manage and what their overall financial health is.

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Q If you could just explain to us how a company's financial health bears on the D&O risk that you're underwriting?
If they are a bankruptcy risk, there is a significant increase in the likelihood of a D&O claim if a company goes bankrupt.
Q Let's go to the top of the page, the top e-mail. You write to a woman named va P-R-Z-Y-C-H-O-D-Z-E-N. Who is that person?
va was my underwriting assistant at the time.
Q What are you asking va to do in this e-mail?
I'm asking her to draft a quote per the terms that ndy was okay with.
Q The last line of your e-mail says, "Subjectivities review of financials at renewal." What is a subjectivity?
It's a line item put on a quote that says in order to bind this, you have to abide by the agreed to, what we're putting in front of you.
Q Did HCC, in fact, offer the quote reflected in your e-mail?
Yes.
MR. MER: Let's go ahead and hand the witness Exhibit 596.
Q Mr. Holl, do you recognize this document?
I do, yes.
Q What is this document?

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This is the quote per the terms that I spelled out to va.
MR. MER: Your Honor, I ask that this be admitted into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 596.)
Q Let's turn to the second page and you'll see as part of this quote, it says, "Contingencies review of financials at renewal."
Is a contingency different from a subjectivity or is it the same thing?
Not in this case, no.
Q So what were you indicating in the quote by this contingency?
Same thing, that if we were going to consider the renewal of the risk, we wanted to see financials.
Q Now, we've been discussing that this was a quote to get to the renewal. Did there come a point in time where the D&O coverage came up for renewal where you looked at whether you would quote on the renewal?
So I don't think that this extension was ever bound, so it wouldn't have been a renewal if this quote wasn't bound. It just would have been an inception of a new policy.
Q Do you recall participating in meetings -- in a meeting

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with other underwriters to look at whether you would participate at the annual renewal of this coverage?
Yes, I do.
MR. MER: I would like to mark as Exhibit 588 the next document. I'm told this was already in evidence. It was shown to Mr. Cohen and admitted during his testimony.
THE COURT: Okay.
Q Do you recognize this agenda, Mr. Holl, that is 588 in evidence?
Yes, I do.
Q You'll see, Mr. Holl, down at the bottom portion of the page, your name is listed as an attendee on behalf of the HCC at the 11:00 a.m. to 12:00 a.m. time slot?
Yes.
Q Do you recall attending this meeting?
Yes, I do.
Q There are a number of individuals listed as attending on behalf of the Trump Organization; llen Weisselberg, Matt Calamari, Michael Cohen, Ron Lieberman, George Sorial, dam Rosen and Patrick Birney.
Do you have a recollection of meeting with any of those individuals during this D&O underwriting meeting on January 10th?
Yes.
Q Who do you recall meeting with?

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llen Weisselberg.
Q nd is it that you recall only meeting with him or is that -- or is it that he's the only one you specifically recall among these people?
He's the only one I specifically recall.
Q But there were other people on behalf of the Trump Organization at the meeting?
Yes, there were.
Q What did you understand Mr. Weisselberg's role to be at the meeting as you perceived it?
The chief financial officer of the Trump Organization.
Q Did you take notes at this meeting?
I did.
Q nd did you report to your superiors, Mr. Pettit and Mr. Stone, about what transpired at the meeting after the meeting ended?
Yes, I did.
MR. MER: I'd like to hand up to the witness Exhibit 2985.
Q This is an e-mail from you to Mr. Stone and Mr. Pettit. Do you recognize this e-mail?
Yes, I do.
Q nd what's the date of this e-mail?
January 10, 2017.
Q So -- and this was sent at 1:19 p.m., so is this

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basically immediately after you left the meeting?
It is. It is on my train ride back to Connecticut.
MR. MER: Your Honor, I move to admit this into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 2985.)
Q Was this e-mail prepared with the benefit of the notes you took during the meeting?
It is, yes.
Q nd what was the purpose for your preparing this e-mail to Mr. Stone and Mr. Pettit?
Just to provide all the information that I obtained during the meeting and provide some of my thoughts, insights or opinions.
Q nd do you consider this e-mail to be an accurate reflection of what transpired at the meeting?
Yes, I do.
Q Just focusing your attention on the paragraph that begins "saw very few financials," do you see that?
Yes.
Q You say in this portion, "Saw very few financials, but did see the balance sheet for year ends 2015. They assured me that the one being put together in a few weeks is better."
When you say, "they assured me, "who, if you recall,

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specifically provided you that assurance?
I don't recall who specifically provided me that assurance.
Q Was it somebody from the Trump Organization?
It was.
Q nd you go on to write, "They have total assets of 6.6 billion, cash of 192 million, total debt of 519 million." Do you see that?
Yes.
Q Why did you choose to specifically call out the 192 million in cash figure in this e-mail to Mr. Stone and Mr. Pettit?
That's generally a meaningful, useful figure in financials for organizations we're looking at.
Q nd what did you consider that figure to reflect?
The amount of cash they had on the balance sheet.
Q Did you view that as a figure that was a measure of liquidity for the company?
Yes.
Q Directing your attention to the next paragraph, you say in the last sentence of this paragraph, "No material litigation or communications from anyone."
What did you intend to reflect in that comment?
It's standard practice in meetings with the management to ask them if they are aware of something that's not public;

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that is, litigation or notices or communications that could lead to litigation that would implicate the D&O policy.
Q What kind of notices or communications would you fit within that description?
I mean, any letter from a law firm making a threat or any notice from a regulatory agency, you know, advising them of concerns they may have, something like that.
Q Did you, in fact, inquire about those items during the underwriting meeting?
I believe -- if I didn't, somebody did. I think I did.
Q nd what are you reflecting in your comment, "no material litigation or communications from anyone"?
What am I reflecting?
Q Yes.
The response that I received to the inquiry.
Q Did you review -- did you view the response that there was no material litigation or communications from anyone in a positive or negative light from an underwriting perspective?
Positive.
Q In what way was it positive?
I mean, if they do have litigation or notices or letters that are of concern, that raises the risk of liability to the D&O policy.
Q nd based on this comment, you were told that there

M. HOLL - PL INTIFF - DIRECT(MR. MER) Page 2502

were -- there was no material litigation or communications from anyone; is that right?
Yes.
Q So the facts that you --
MR. KISE: Your Honor, I just want to -- maybe this will be connected up, but I just want to raise a relevance objection to this line of questioning. I mean, I've watched it, so I let --
THE COURT: Overruled. I see relevance.
MR. KISE: Okay.
MR. MER: Thank you, Your Honor.
Q We are looking now at an e-mail that has certain factor information that you are sending to about this underwriting meeting to Mr. Stone and Mr. Pettit who are your superiors and who have authority to issue the policy. Why were you conveying the facts that you are conveying to them?
So they can start considering whether it's a risk that we want to provide directors and officers cover for.
Q Did you consider the facts that you were putting into your e-mail to be relevant to their assessment?
Yes.
Q Did HCC, in fact, put in a quote for this coverage following your participation in this underwriting meeting?
Yes, we did.
MR. MER: I'd like to hand the witness

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Exhibit 592.
Q Mr. Holl, this is a letter you are sending to Mr. Vanasco on January 31, 2017. Do you recognize this document?
Yes, I do.
Q nd what is this?
This is a primary quote for D&O cover for what's now being referred to as the Donald Trump Revocable Trust.
MR. MER: Your Honor, I move this document into evidence.
THE COURT: Granted. It is in.
MR. KISE: Same objection, Your Honor, on relevance which I haven't explained. I know you overruled it, but I haven't explained it, but that's okay.
THE COURT: You don't think it's relevant. I see the relevance, so I don't know that there is a point in debating it.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 592.)
Q Mr. Holl, does this reflect the terms that you were authorized to quote for the cover from Mr. Stone?
Yes.
Q nd what layer of coverage is HCC quoting?
The primary letter.
Q nd what is the premium being proposed for this quote?
$295,000.

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Q Did the Trump Organization or the trust accept this proposal and bind coverage?
Yes, they did.
Q Now, this indicates that the coverage was going to expire on January 30, 2018; is that right?
Yes.
Q Did it, in fact, come up for renewal in January of 2018?
Yes.
MR. MER: I'm going to hand the witness Exhibit 595.
Q Mr. Holl, is this a letter you sent to Mr. Vanasco on February 9, 2018?
Yes.
Q Does this relate to the renewal of the policy quote that we were just looking at?
Yes, it does.
MR. MER: Your Honor, I move this into evidence.
MR. KISE: Same objection.
THE COURT: Same ruling. It's in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 595.)
Q Just to clarify one thing, Mr. Holl, because we had looked at the expiration date being January 30, 2018. If you look at the first paragraph, it says, "With regard to the

above-referenced account, Tokio Marine HCC D&O Group is pleased to bind a 12-month extension of the current aggregate of limited liability on behalf of U.S. Specialty Insurance Company from February 10, 2018 to February 10, 2019."

Was there a short extension of the policy to get from January 30th to February 10th?

Yes, there was.

Q So this is the quote to extend for a 12-month period the policy that had been bound in the prior year?

Yes, it is.

(Continued on the next page.)

Q nd what is the premium amount being proposed for this 12-month renewal?

295,000.

Q So is that at the same as the expiring premium?

Correct, yes.

Q Did the Trust accept the renewal quote?

Yes, they did.

Q I want to ask you about the renewal for the following year in 2019.

Do you recall if HCC quoted a renewal for the following 12-month period?

Yes.

Q nd did they?

Did we quote it, HCC, yes, we did.

MR. MER: Let me show the witness Exhibit 2989.

Q Mr. Holl, do you recognize this e-mail from you to va?

Yes, I do.

Q nd does this relate to a renewal quote for 2019 to 2020?

Yes, it does.

MR. MER: Yes, I move this exhibit into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2989 in evidence.)

MR. KISE: Same objection, relevance.

Q Now, we had looked at the prior two renewal quotes, which were for $295,000 for the annual premium.

This renewal, what is the proposed premium here?

1.6 million.

Q nd can you explain to us why the premium quote is being increased from $295,000 to 1.6 million?

Because our assessment of the risk changed and we believed that the risk was significantly more risky than our initial assessments.

Q nd it looks like there is an alternative option being proposed which was to remove entity cover and then the premium would be 950,000; is that right?

Yes.

Q Did the Trump Organization or the Trust renew the policy for this increased premium, either option?

No, they did not.

MR. MER: That's all I have, Your Honor.

THE COURT: Okay. ny cross examination?

MR. FIELDS: Yes, Your Honor.

MR. KISE: Your Honor, can we have a short break as you suggested?

THE COURT: Sure. bout how long you're thinking?

MR. KISE: Ten minutes.

THE COURT: Sure.

(Whereupon, there is a recess in the proceedings.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: Mr. Kise, have you had -- is there a reasonable chance under the circumstances to review the direct testimony and prepare for cross examination?

MR. KISE: I would say we're prepared to proceed now with some cross examination. I don't know I would call it reasonable under the circumstances, but we are prepared and we will make every effort to not have to call the witness back. I don't know that that will be necessary, but I don't want to waive any rights on behalf of my clients or anyone else for that matter, but we are going to proceed and try and move on with it.

MR. MER: I'm just going to note for the record we advised Ms. Habba the order of the witnesses, so we think by providing notice to Ms. Habba, we provided notice to all defendants.

MR. KISE: I'm not sure what he's arguing about. I just said -- but in the event that something comes up, documents or things that we aren't aware of, we'll present that to the Court. But I certainly think as we have done with all the witnesses we're entitled to call them in our case if we need to. But we're not going to burden anyone with a reappearance. We've all been here far too long.

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THE COURT: Okay. I appreciate that you are willing to go forward at this point reserving whatever rights. I have -- well, let me ask one other question. I know you're doing what we're just referring to. Did you get a chance to see the written decision I wrote this morning?
MR. KISE: I have not, Your Honor, but I will on the next break. I will.
THE COURT: Might ruin your lunch.
MR. KISE: No, no.
THE COURT: But in any event, I have reconsidered the $10,000 penalty and I am adhering to that decision. I have looked at the video of what Mr. Trump said outside and of course I've taken into consideration your argument that he must have been referring to Michael Cohen because that's what he talked about. There was a clear, brief, but clear transition. I think he might have an ooh, ahhh, whatever, but he said "we are doing very well, it's going well."
He's a -- that was, to me, a clear transition from one person to another and I think the original -- the person originally referred to is very clear and that's the fact I found and that's the penalty I levied, so let's move ahead.
Okay. Let's get the witness back.
THE COURT OFFICER: Witness entering.
(Whereupon, the witness enters the courtroom and approaches the witness stand.)

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THE COURT: Okay.
MR. FIELDS: With the Court's permission, may I examine the witness? It should be exceedingly brief.
THE COURT: bsolutely.
CROSS EX MIN TION
BY MR. FIELDS:
Q Good morning, Mr. Holl. I represent -- I'm going to ask you a couple questions, if that's okay?
Yes, okay.
Q I notice you're wearing an merican flag pin and I like that, so thank you.
Mr. Holl, you were shown Plaintiff's Exhibit 587 by Counsel for the government. s you'll recall, I think there was a comment there where you said, "a nice, juicy one." Do you generally recall that?
Yes.
Q Would it be fair to say in December 2016 you were excited about the prospect of insuring the Trump Organization or various of its subsidiaries?
Yes.
Q nd that's because there was -- at that point Donald Trump had just been elected president and was the president-elect; correct?
Correct.
Q nd you believed that that could help your personal business. Is that fair?

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MR. MER: Objection to "personal business."
Q You originate business at HCC, Mr. Holl?
Yes.
Q nd did -- Donald Trump being elected president and being a potential client of yours, did you believe that that could help your business?
No.
Q You did not believe that doing business with the president-elect of the United States was going to help your personal business at HCC?
No.
Q So you did not plan to tell anybody that you were insuring the president-elect's trust. Is that fair?
That's fair. We don't discuss who our insureds are.
Q But nevertheless you were excited?
Yes.
Q t the time that you -- withdrawn.
Just so that I'm clear, there were several policies that you discussed with Mr. mer and I want to make sure I understand them all.
There was the initial policy that was to sit above the adverse policy that was bound in approximately December of 2016?
MR. MER: I'm going to object. I think the witness's testimony was he didn't think that was bound.

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THE COURT: You can ask.
Q Was the December 6, 2016 policy bound?
I don't believe that extension was -- or that 5X5 was bound.
Q Okay. So then would it be fair to say then that the first policy that HCC bound under your direction was the January 2017 D&O policy?
MR. MER: Objection to "under your direction."
THE COURT: Sustained. His testimony was somewhat different.
MR. FIELDS: Okay.
THE COURT: "Direction" is the wrong word.
Q Open-ended question.
While you were working at HCC what was the first policy that you bound for the Trump Trust?
Yes.
MR. MER: Can I just object to "bound?"
THE COURT: Yes, objection sustained.
Q Sir, do you work at HCC?
Yes, I do.
Q Did you work at HCC in January of 2017?
Yes.
Q Okay, great.
So now my question is what was the first policy at HCC while you were working there found for the Trump Trust?

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Yes, that January 30th policy.
Q ll right.
The primary policy.
Q The January 30, 2017 policy?
Correct.
Q nd then there was a renewal of that in January -- approximately January 30th of 2018. Is that fair?
So technically, it didn't renew. It got extended, so it came up for renewal and it was then extended instead.
Q Okay. nd then in 2019 there was no renewal or extension; correct?
Correct.
Q So then would you agree that there were two relevant policies while you were working at HCC that you discussed with Mr. mer that were actually bound?
There was only one policy that was bound. There was one bound policy number with an extension.
Q nd one of them was in 2017 and it was extended in 2018?
Correct, same policy number.
Q Okay. In December of 2016, when you were first approached by ON with the possibility of working -- binding -- or HCC binding coverage for the Trump Trust, you were aware that the Trump Organization, I'll use that term broadly, was concerned about potential exposure now that Donald Trump had

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been elected president; correct?
Correct.
Q So you were aware that was a reason why they were seeking additional coverage; correct?
I was aware that they thought that they would be a higher -- they would have higher exposure and that's why they were seeking additional cover.
Q nd the first time that you reviewed any financials for the Trump Organization was in January of 2019?
Yes.
Q nd that was the underwriting meeting that you discussed with Counsel for the government, believe it was January 10th of 2017?
I think so, yes.
MR. FIELDS: Can we pull up Plaintiff's 588, please? nd if we can enlarge the list of attendees under the Trump Organization?
Q Just to make sure I understand your testimony, I believe you testified that you generally recall llen Weisselberg being there, but you don't have a clear recollection about some of the other individuals that are listed there?
Yes, yes.
Q Okay. nd I believe your testimony was that there was a balance sheet that you reviewed; is that correct?
That's correct.

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Q nd I think -- I believe the balance sheet had $192 million in cash listed. Is that fair?
That's correct.
Q The balance sheet that you reviewed, was it a piece of paper, was it a PDF, an Excel spreadsheet? What did it look like?
It was a piece of paper.
Q nd do you recall where the piece of paper was while you were in the room; on the table, somebody hand it to you?
It was handed around amongst the underwriters.
Q Do you recall who handed it to you?
I don't recall who handed it to me.
Q nd would it be fair to say, Mr. Holl, that the -- withdrawn.
re you familiar with what a retention is in an insurance policy?
Yes, I am.
Q nd for the uninitiated, what is a retention generally?
It's a deductible.
Q It works similarly to a deductible in an insurance -- health insurance policy, for instance?
It's what the insured's responsible for before the policy would start.
Q nd would you agree with me that the purpose of an insurance underwriter's review of financials of a private

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company seeking D&O coverage is to ensure that the potential insured has the financial wherewithal to cover the retention?
Yes.
Q nd in this case I believe your testimony was that the retention was approximately $2.5 million throughout the life of these -- the policy and the extension?
Yes.
Q Okay. So just so I'm clear as an underwriter, when you went to Trump Tower that day to review the financials, would you agree with me that your primary concern was to ensure that the Trump Organization could meet its requirements to pay the retention if needed?
Yes. nd that they were not a bankruptcy risk.
Q Fair. But in this case as you just said the retention was $2.5 million; correct?
Correct.
Q nd so, for instance, if -- withdrawn.
nd there was $192 million in cash on the balance sheet that you saw; correct?
Yes.
Q So if the Trump Organization had identified, let's say, $25 million in cash on the balance sheet, ten times the retention, you wouldn't have been concerned; correct?
MR. MER: Objection. Calls for speculation.
THE COURT: Overruled.

So can you repeat that? Sorry.
MR. FIELDS: May I have a read back, Your Honor?
THE COURT: Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
So I think it would depend on the debt as well, right, and whether they had -- so it's not as simple as a yes or no. If they had debt on the balance sheet coming due and that debt amount was larger than the cash that they had on the balance sheet, then yes, but correct. If they had 25 million and a two and a half million dollar retention there would be enough on the balance sheet to cover their retention.
Q Were you at all concerned with any of the debt you saw on the balance sheet that day?
I was not.
Q Did you ask to see any bank statements, Mr. Holl?
Bank statements, no.
Q nd just to be clear, you were binding a policy on behalf of the Donald J. Trump Revocable Trust; correct?
MR. MER: Objection, Your Honor. It lacks foundation. This witness didn't bind anything. He had no underwriting authority.
THE COURT: You want to just -- withdrawn.
Q Did HCC bind a D&O policy on behalf of the Donald J. Trump Revocable Trust on or about January 30th of

2017?
Yes.
Q nd you were involved in that process; correct?
I was.
MR. FIELDS: ll right. I'm going to show the witness what's been premarked as Plaintiff's 597.
nd, Your Honor, I don't intend to really examine the witness much about the document. I apologize. I don't have extra copies, but it was a little bit short trying to print them.
THE COURT: I'm sure that will work.
Q Mr. Holl, I'll just ask you, if you could, to take a look at this document. Let me know if you recognize it.
THE COURT: Do you recognize it?
THE WITNESS: Was there a question?
Q Do you recognize the document?
Yes.
Q What is it?
That is the policy that we wrote on January 30, 2017.
Q nd just to be clear, did you -- were you able to page through some of the documents to ensure that it's -- appears to be the entire policy that HCC wrote in 2017?
It appears to be.
Q Fair enough.
MR. FIELDS: Move to admit Plaintiff's 597.

MR. MER: No objection.
THE COURT: It's in evidence.
Q Mr. Holl, you were asked by Counsel for the government about some representations that were made during the underwriting meeting at Trump Tower in 2017 regarding -- and I use the wrong terminology, but prior pending litigation or notices of any potential claims. Do you generally recall that?
Yes.
Q nd I believe your testimony was -- and please correct me if I'm wrong -- that there was a disclosure to you that there was no potential claims known to somebody that told you that statement. Is that an accurate representation of your testimony?
Yes.
Q nd I believe you also testified that you're not sure if you asked, but somebody else may have asked that question?
Correct.
Q nd do you recall who it is that made that statement to you -- withdrawn.
Do you recall who made the statement about no known claims?
I don't recall.
MR. MER: Your Honor, just so the record is clear that does mischaracterize the testimony. There was no material litigation and no communications from anyone.

THE COURT: re you relying on the specific language? Is that what you're looking to correct?
MR. MER: Yes, as opposed to no known claims that was never part of the testimony or the document.
THE COURT: Right.
MR. FIELDS: Your Honor, I apologize. I had a couple of minutes to prepare this, so please forgive me.
THE COURT: ll right. The record should be considered changed to reflect the exact wording.
MR. FIELDS: One moment, please.
THE COURT: Sure.
MR. FIELDS: Thank you. I want to make sure I use the right terminology.
Q So with regard to the statement that there was no material litigation or communication from anyone, if at some point you, HCC, had determined that there was information that was not known to them that should have been made to them or disclosed to them, isn't it true that HCC has the ability to rescind the policy?
I would have to look at the specific policy to see if we had the ability to rescind or not.
Q Do you have any reason to doubt that this policy does not contain a right to rescind by the insurer?
I don't know what -- I don't know one way or the other. Sometimes we have language on there that says that the insurer

has no right to rescind.
Q But be that as it may, if there is a right to rescind, the insurer has the right to rescind the policy; correct?
Correct.
MR. MER: Object to the form of the question.
MR. FIELDS: It's cross examination, but it's okay.
THE COURT: Overruled.
Q In addition, the insurer maintains the right to disclaim coverage as well; correct?
Meaning deny coverage for something submitted?
Q Sure.
Yes.
Q Do you know if this policy contains a right for the insurer to deny coverage if they did not believe that it was covered under the policy?
I mean, it doesn't specifically contain language that says that. It's that if the language doesn't provide coverage, it doesn't provide coverage.
Q Did you ever meet with Donald J. Trump by any chance, Mr. Holl?
No, I did not.
Q ll right. nd at some point you determined that you had made a mistake and underpriced the risk in approximately 2019; correct?
I wouldn't say we made a mistake. I'd just say that

that newest quote number reflected what we perceived to be the going-forward risk.
Q Did you underprice the risk?
I don't know how to answer that.
MR. FIELDS: Let's pull up --
Q Mr. Holl, you were interviewed by the ttorney General's Office in February of 2022; correct?
Okay. I was.
Q Were you?
Yes.
MR. FIELDS: ll right. Let's pull up page 145, line six. We'll start at line two.
Q ll right. The question is:
" nd what was the basis for increasing the premium for the same extension period to such a significant extent?
" NSWER: It was clear to us that we had underpriced this risk and that there was significant exposure to us."
Is that what you answered in February of 2022?
MR. MER: Can we read the whole answer so we have a context?
THE COURT: Well, if you think it matters, yes; if you're just saying it because it's only part of the answer, no.
MR. MER: Well, I think it does matter.

MR. KISE: On redirect they can read the rest of the answer.
MR. MER: I think when you read the question you should read the whole question and the whole answer.
MR. KISE: That would be nice if you had done that the entirety of this case, but you haven't.
THE COURT: Sometimes yes, sometimes no.
In an abundance of caution, I'll ask that the entire answer be read back.
Q ll right, beginning at line six --
MR. FIELDS: I'll withdraw the question, Your Honor.
Transcript continues on the following page....

THE COURT: It's a lot of reading.
MR. KISE: Exactly. It is a lot of reading.
MR. FIELDS: Thank you. That's all, Your Honor.
THE COURT: ny re-direct?
MR. MER: I do. I just want to make sure is that side done?
MR. ROBERT: Subject to our reservation of calling the witness back on our case.
THE COURT: Okay.
MR. MER: I just have a few questions. So if I could do it from here, Your Honor, if that's all right.
THE COURT: Of course.
RE-CROSS EX MIN TION
BY MR. MER:
Q I want to ask you about Mr. Fields's questions concerning the hypothetical that instead of telling you it was 192 million in cash, they instead had told you it was 25 million in cash or ten times the retention. Do you recall those questions?
I do.
Q Okay. Now, the 192 cash number is the number that you forwarded on to Mr. Stone and Mr. Pettit, correct?
Yes.
Q nd at the time, you didn't have any authority to underwrite the business; is that right?

MR. KISE: Objection; leading.
MR. MER: I think it is summarizing testimony he already --
MR. KISE: Leading question.
THE COURT: Well, it might be simpler if you just ask it. lthough, it might still be leading, but I will allow it if you just ask it in the abstract.
MR. MER: I think he already testified to it, so I'm just trying to bring us back.
Q Did you have authority to underwrite this risk at that point in time yourself? Did you have underwriting authority?
I don't have under -- I don't have authority, correct.
Q nd if they had told you it was 25 million in cash, would that have been the number that you conveyed as opposed to 192 million in cash?
Yes.
Q nd as you sit here today, you don't know what they would have done in response to getting that different dollar figure, do you?
That's fair, yes.
MR. MER: That's all I have, Your Honor.
THE COURT: ny re-cross?
MR. KISE: Not at this time subject to the reservation, no. Thank you.
THE COURT: Okay. Let's take a break until noon

and the witness is excused. Thank you. We will have Ms. Dillon, right?
MR. SOLOMON: Yes, Your Honor.
THE COURT: Break until noon and then we will have Ms. Dillon.
(Witness excused.)
(Whereupon, a recess was taken.)
THE OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.
THE COURT: Mr. Solomon, would you like to call your next witness?
MR. SOLOMON: I would, Your Honor. Thank you. The People call Sheri Dillon.
THE COURT OFFICER: Witness entering.
S H E R I D I L L O N, a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:
THE COURT OFFICER: Please state your name and either home or business address on the record.
THE WITNESS: Sheri Dillon. 1111 Pennsylvania venue, N.W. Washington, DC. Zip code 20004.
THE COURT: Please proceed.
MR. SOLOMON: Thank you, Your Honor.
DIRECT EX MIN TION
MR. SOLOMON:

Q Good afternoon, Ms. Dillon. Can you, please, briefly describe your post high school education?
I attended college, University of Missouri. Graduated in four years with a bachelor's degree and I then went on to a masters program. I have a masters in public policy and several years after that, I went to law school at Georgetown Law.
Q bdomen when did you graduate from Georgetown Law?
1999.
Q nd are you admitted to any bars?
Yes, D.C. and Georgia.
Q Thank you. Could you, please, briefly describe your work experience after your admission to the bar?
I began my career at McGee Nelson as -- no, I'm sorry. I actually began my career at King & Spalding for just a short period of time and then the tax group at McGee -- no. King and Spalding largely broke off, started their own firm McGee Nelson. I joined McGee Nelson which was eventually merged into Bingham & McCutchen, L.L.P. Following that, I left for a year and went to Vinson & Elkins. nd after that, I rejoined my prior colleagues from Bingham who had been merged in Morgan Lewis and that was in 2015.
Q You said you worked at Vinson & Elkins for one year. So that was roughly 2014 to 2015.
That would be correct and it is roughly one year.
Q nd when were you at Bingham?

That would be roughly 2009 to 2014 is the best of my recollection. I'm not quite sure on those dates.
Q pproximate dates are okay. Thank you.
When you were at Bingham, were you a partner?
I began my career at Bingham, yes, I would have been a partner.
Q Were you in a particular group at Bingham?
The tax group. I've always practiced tax law as my primary practice. lthough, I advise on other things as well.
Q nd when you moved to Vinson Elkins, you were also a partner?
Yes, I was also a partner in the tax group.
Q When you rejoined certain of your colleagues in Morgan Lewis in 2015, were you a partner?
Yes.
Q re you currently at Morgan Lewis?
Yes.
Q re you currently a partner there?
I am currently a partner at Morgan Lewis.
Q Did there come a time that you in your professional capacity began doing work for the Trump Organization?
Yes.
Q When was that?
That would have been began more or less in 2005.
Q nd was the Trump Organization your client?

It was a firm client.
Q nd when you joined Bingham in or about 2009, did you bring the Trump Organization work with you?
Yes, the Trump Organization continued with us.
Q You said "us." I'm talking about you. You continued doing work for the Trump Organization, correct?
Yes, I continued doing work for the Trump Organization.
Q nd when you moved to Vinson & Elkins in or about 2014, did the Trump Organization continue to use your services?
Yes, they did.
Q nd when you moved to Morgan Lewis in 2015, did the Trump Organization come with you?
Yes, the Trump Organization continued to.
Q Do you currently do work for the Trump Organization?
No.
Q When did you cease doing work for the Trump Organization?
That would have been 2020, some point in 2020.
Q Do you recall when in 2020?
I do not. It would have been in the spring or early summer.
Q Was there some precipitating event that caused you to cease doing work for the Trump Organization?
No, not any one event.
Q Were there several events that caused you to cease

doing work for the Trump Organization?
There just came a time when it was mutually agreed with the client that it was no longer in their best interest for me to be representing the Trump Organization.
Q Keeping this at a high level, can you describe the type of work you've done for the Trump Organization over the years?
Predominantly providing tax advice and advice related to the tax advice as well as other projects from time to time as requested by my client.
Q What would those other projects be?
ssisting reviewing contracts from time to time, helping with forming entities and things of that nature.
Q Did you ever do any work responding to government investigations?
Yes. From time to time, I would help with government investigations or other government inquiries.
Q nything else you can recall?
I assisted in the preparation of their work with Office of Government Ethics, helping with the disclosure requirements.
Q Did you work on what's known as the OGE form the Office of Government Ethics form that's filed?
I did provide legal advice with respect to OGE form 278.
Q You mentioned you provided tax advice. What were -- again, at a high level. I'm not asking for specific

information, but at a high level, what was the -- what were the general areas of tax advice that you provided to the Trump Organization?
The general high areas of tax advice would be related to one, assisting with IRS examinations, working through that process as well as for va right of Trump entities as well as assisting with tax planning, looking at the tax aspects of various transactions as they came along over the years.
Q Would tax planning include providing advice with respect to donations of potential easements?
Donations of potential easements would be I would provide tax advice with respect to donations, legal advice relating to tax relating to conservation easement.
THE COURT: Potential conservation easement, potential transactions?
THE WITNESS: Yes, both potential and lots of potential transactions across the board as well as actual transactions that occurred.
Q In connection with either potential or actual donations of conservation easements, would you interact with third-party professionals such as appraisers?
I would interact with lots of _ professionals, appraisers, environmentalists, a whole -- engineers, architects, all sorts of folks, yes.
Q During your time providing services to the Trump

Organization, with whom did you interact?
Is there a specific period you're looking for?
Q Let's put the period 2011 to present. Withdrawn. Excuse me. Withdrawn, please.
Let's put the period as 2011 to when you ceased providing services in or about 2020.
I worked with a lot of people at the Trump Organization. It would have been -- gosh. Jason Greenblatt, Jaclyn Maranes, lan Garten. I'm sorry. I'm going through departments. s well as Jeff McConney, llen Weisselberg, Mark Hawthorn. Gosh. Just a host of people, a variety right of folks.
Q Let's throw out some names to see if we can jog your memory.
Sure.
Q Donald Trump?
Sr. or --
Q Sr. When I refer to Donald Trump today, I will be referring to Sr. If I am referring to Jr., I will add Jr., so the record is clear.
That would be very helpful. Thank you.
Q Did you interact with Donald J. Trump between the 2011 through the termination of the relationship?
To some degree, yes.
Q What do you mean by "to some degree?"

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I did interact, but it wasn't -- he was pretty high on the food chain. That's not who I spent most of my time with.
Q Understood. Not as often as some of the other people you just mentioned?
Yes.
Q Fair enough. Donald Trump Jr.?
From time to time.
Q Eric Trump?
Yes, from time to time on certain projects.
Q More often than you interacted with Donald J. Trump?
It would depend on the project.
Q Ivanka Trump?
Yes.
Q Patrick Birney?
Yes.
Q Jill Martin?
Yes.
Q nyone else you can think of now that I've given you a couple of names from various departments?
There are others that were in the general counsel's office and I'm sorry. I'm just not remembering their names right now. dam, his last name I'm not remembering. David Cohen and I know there are others that -- yeah. If you have others to ask me about -- I'm sorry. It has been a while.
Q I appreciate the effort to try to remember. We will

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focus on some documents and that may refresh your recollection later on.
Great.
Q Sure.
Do you recall working on donations or potential donations of conservation easements relating to TNGCL also known as Trump National Golf Club L ?
Yes.
Q Do you recall working on a potential donation of a conservation easement at Briarcliff Development?
Yes.
Q That's the Briarcliff Golf Course located in Westchester County in New York, correct?
That's my understanding.
Q nd do you recall working on a potential donation of a conservation easement relating to Seven Springs?
Yes.
Q nd Seven Springs, that's the property located in Westchester in the Towns of Bedford, New Castle and North Castle, correct?
That is correct.
Q So let's focus on those and if there are differences between them, I'd like you to point it out.
When you worked on those potential donations, what did that work entail?

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That work would entail coming to an understanding of the property. It would come to an understanding most importantly the key element when thinking about a conservation easement is that an easement is something that is going to be granted in perpetuity and my perspective, to back up for a second, is from a tax law perspective. So I want to be clear on that.
So the tax law requires that it be granted and most easements are granted in perpetuity and perpetuity means forever. s we all know from our property class back in law, perpetuities, so you go back to that and so when you're granting an easement, it is a big decision. nd a conservation easement, what that means is you retain the land and you put in conservation easement on it which is restricting the uses of the land. nd so there's a lot of different decisions that have to be made with that and that's where I would spend a lot of my time in coming to understand the property, coming to understand what you want to do with it or not do with it, and it would be the choices of which parts of the property do you want to restrict and which parts do you not want to restrict and what will those restrictions be.
nd then once you determine that, I would work with the client to help them implement that, working with the environmentalists. There's all kinds of environmental reports that have to be done, baseline documentation, working on the

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conservation easement deed, that makes the grant of the easement, working with the appraisers to determine the value of the easement working with engineers to some degree.
lthough, it was generally the other professionals who would work with the engineers, but it was just that whole collection of people and every piece of property is unique, so these are sort of some of the common elements sometimes there would be others who needed to be involved depending on what the project was and what the land looks like. But it would also be making sure that all of these things are laid out in the tax code and all of these various requirements, what does baseline documentation of the environmental aspects of the property, what does that mean, what's required for that, what's required for the appraisal. It needs to have qualified appraisers and a qualified appraisal. So there's all kinds of hosts of legal requirements that need to be satisfied. So that's the work I would do.
Q I think it was implied in your answer, but so the record is clear, you mentioned legal requirements. Were these requirements, to your understanding, to enable the donor obtain a tax deduction for the value of a donation?
Some of them were. Some of them were requirements that are other sorts of requirements. gain, we would want to have a deed that would be respected, that could be recorded. That would be legal requirements outside of the tax code, but a lot

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of them are legal requirements that are set forth in the tax codes, so that Congress provided incentives encouraging folks to conserve land. Restrict your rights. Don't build on it. Let's keep public parks. Let's keep rivers. Let's keep beautiful forests. Let's keep all of that. nd to do that, they did -- they created an incentive, a charitable deduction for tax purposes and that -- so in order to secure the deduction, you would have to follow a lot of very stringent and lengthy legal requirements that are set out in the tax code in a host of treasury regulations. I think there's probably 50 pages of these regulations, IRS guidance that even further explains the code and the regulations and a huge body of case law that's developed on conservation easements as well as other donations of charitable property.

Q You mentioned in an earlier answer, an appraisal. I think the term that I've seen is a qualified appraisal. Have you seen that term?

Yes.

Q qualified appraisal, does that have a different meaning to you than an appraisal?

qualified appraisal is an appraisal that is described in the tax code and in order to secure it, a deduction, the appraisal that you have has to meet the requirements of a qualified appraisal.

Q nd the appraisal is an appraisal of the value of the

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easement that is being donated; is that correct?

It is the value of what you have given up in your easement, the economic value of the rights and restrictions that you have given up.

Q nd you mentioned that you've worked on several of these. Do you know how that value is determined by an appraiser?

There are different methods for determining that value. The treasury regulations lay out the methods that may be used. The primary method, I think my recollection is -- I don't have the regs in front of me right now, but I believe the principal method is to find sales of comparable conservation easements. Those rarely exist, so the treasury regulations have an alternative way to measure the value of a conservation easement and that is called the before and after method.

Q nd in the before and after method, does the appraiser determine the value of the property before placement of the easement, the value of the property after the placement of the easement, subtract the latter from the former to come up with that value of the easement itself?

So, yes, the appraiser, if I understood this, first determines --

Q If my question wasn't clear, please tell me and explain it in your own words.

The appraiser values the entire property unrestricted

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meaning with no restriction.

THE COURT: You left out the word "first" which was included in your first answer.

THE WITNESS: I will try to speak slower. So yeah, we first start with the entire property. You value that. So in my example, we'll say that's worth a hundred. You then value the property after the restrictions have been placed on, taking into the characteristics of the property as it would then exist with the conservation easement. So the after-value would generally be less.

So let's say started off of 100. Your after-value is ten. The appraiser then would say, well, the easement is the difference between the entire value of the property unrestricted and the value of the property restricted. So in my example, it would be 100 minus ten, would be 90 the value of the property.

There would then need to be other considerations taken into account which would have to do with does the property owner have contiguous property that surrounds or is in the nearby area of the property that's been restricted.

Q nd if there is an enhancement to the value of the contiguous property, that would be deducted from the value of the donation, correct?

That is correct.

Q We'll come back to easements in more detail as we go

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on, but I would like to turn to something you mentioned about doing work in connection with government investigations for the Trump Organization.

Do you recall in or about September of 2016 communicating with the New York ttorney General's Office with respect to an inquiry that the office was conducting?

I know I have responded to lots of things. So again, if you could give me a little more background, that might help me.

Q I will show you a document, ma'am, and see if it refreshes your recollection.

MR. SOLOMON: If we could, please, pull up PX 1001 and may I hand this up to the witness.

Q Ma'am, this is a letter dated September 27, 2016 sent by electronic mail and certified mail return receipt requested to you at Morgan Lewis. You were at Morgan Lewis in 2016, correct?

Yes, I was at Morgan Lewis then.

Q This is from the State of New York Office of the ttorney General from the Charities Bureau, correct?

Yes, the letter is from the Charities Bureau.

Q Did you receive this on or about September 27, 2016?

Yes, I did.

MR. SOLOMON: We offer this in evidence.

THE COURT: Granted. It is in.

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(Whereupon, the Document was marked in evidence as Plaintiffs Exhibit 1001.)
Q Does this refresh your recollection to at least one matter that you were handling for the Trump Organization in connection with a government inquiry?
Yes, it does.
Q What can you tell me if you -- withdrawn.
t a high level, what was your understanding of this inquiry that was being conducted in or about September of 2016?
MR. ROBERT: I appreciate the way Mr. Solomon has worded the question, "at a high level." I just want to make sure there is no waiver of attorney-client privilege here and I don't think that's what Mr. Solomon is getting at. I just wanted the record clear. Do you agree, Mr. Solomon, you are not trying to --
MR. SOLOMON: We are not asking the witness to waive privilege. We just want to know the witness' understanding of what the investigation concerned.
MR. ROBERT: From a high level, not conversations with any of her clients?
MR. SOLOMON: My question did not ask for conversations with the client.
MR. ROBERT: I didn't think you were and --
MR. SOLOMON: lso to be clear for the record, this witness received the letter. So this information came to

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the witness, not from the client, but from the ttorney General's office.
MR. ROBERT: I hear what you're saying. I just wanted the record to be clear. Got it.
MR. SOLOMON: No issue.
THE COURT: Please continue.
Q Does this letter refresh your recollection about a -- about this inquiry?
Yes, it does.
Q When you received this letter and read this letter, did you have an understanding as to what the inquiry concerned?
Yes.
Q What was that understanding?
My understanding was the Charities Bureau was taking a look at whether the Trump Foundation had complied with New York State law in connection with its activities.
Q I only want the names. I'm not asking what you discussed. So let's be clear. Did you discuss this request for information with anyone from the Trump Organization?
Yes.
Q With whom did you discuss it?
That would have been Jason Greenblatt.
Q nyone else?
Certainly at some point President Trump. Probably at some point a variety of the in-house lawyers at Trump when I was

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trying to understand it. I would have talked to Jeff McConney. I would have talked with llen Weisselberg. I would have talked with Debra whose last name is escaping me right now. She is one of the internal bookkeepers at the organization.
THE COURT: I have to ask about "would have." Does this mean you remember you did or does this mean you think generally looking back, "Yeah, that's probably who I spoke to"?
THE WITNESS: I would have spoken to them. Yes, I spoke to them. I'm sorry. Got me there. Yeah, I would have spoken to them.
THE COURT: Thanks.
THE WITNESS: I did speak to them to clarify.
THE COURT: We are very precise.
THE WITNESS: t some point in time, not with everything in this letter, but in general in connection with the investigation.
Q When you had these conversations, were you ever made aware of a prior communication from the ttorney General's office directed to Mr. Weisselberg concerning a contribution in the amount of $25,000 made by the Donald J. Trump Foundation to an organization known as nd Justice For ll?
MR. ROBERT: Objection. If the knowledge came from a conversation with any of the clients, it would be privileged. So if the question is "did the witness learn

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from any source other than her client", that's a fair question. But just a general question "did she become aware," she may have become aware of it from her client and the mere fact that she says that would be an invasion of the privilege.
THE COURT: I'm not sure that that's right. The fact that there was some discussion doesn't mean that that was advice asked or advice given, but we might be able to avoid that issue by --
MR. SOLOMON: That's all I was asking, was she made aware. I am not asking what was said. I'm not asking advice that was given. Was she made aware of the prior communication from the ttorney General's office? May I finish, please? I don't think that's privileged. The mere fact of the existence of prior communications is not privileged.
MR. ROBERT: Your Honor, any fact that a lawyer learns from his or her client during the scope of their representation is governed by attorney-client privilege. That's why if the question is "did you learn a fact from someone other than the client," that's a fair question. But once we get into "were you made aware of something," then becomes the issue of who made you aware of it and that conversation is absolutely privileged.
THE COURT: I disagree. It is not advice.

MR. SOLOMON: nd also, Your Honor, not every fact you learn from your counsel or from the client would be privileged. If a client told me, "today is Thursday," that doesn't make that communication privileged.

MR. ROBERT: It would make it confidential if it's absent an order directing an attorney to provide it. It would be a problem, but here, the judge made his ruling.

THE COURT: So objection noted, understood, but overruled.

Q Simple question. Did you become aware of a prior communication from the ttorney General's office relating to the contribution that I described?

t some -- I'm sorry. Of a prior communication from the ttorney General to?

Q To the Trump Organization relating to a $25,000 contribution made by the Donald J. Trump Foundation to an organization known as nd Justice For ll?

I believe I was aware of that communication. I don't recall the details.

(Continued on the next page.)

Q nd were you made aware that the Donald J. Trump Foundation responded to the ttorney General's Office? It's a yes or no.

I believe I was aware of that, too, yes.

MR. SOLOMON: Okay. Could we please mark as PX 1000 for identification?

Q Ma'am, while you're reviewing it, I'll just identify for the record that this is or appears to be a letter on the Donald J. Trump Foundation letterhead dated June 28, 2016 addressed to someone at the New York State ttorney General's Office.

MR. KISE: Your Honor?

THE COURT: Yes.

MR. KISE: I'm just going to impose yet another objection. What does this have to do with anything in this case? I mean, maybe Mr. Solomon is going to connect it up, but this is 2016 and it's a completely separate investigation of an entity that's not a defendant here. It has no connection to these proceedings of an investigation in a matter that's long since been over, so I know we're all interested in moving this along, I just don't see what connection this has to these proceedings.

THE COURT: Mr. Solomon?

MR. SOLOMON: I think Your Honor heard earlier today from the prior witness that representations were made

to potential insurance carriers that there were no outstanding investigations, inquiries and the like. I don't remember the exact language. I know we had to go back to find the exact language, but in the vernacular there are no outstanding claims asserted or unasserted and that representation was made to HCC and what we're doing now is just establishing whether there were --

MR. KISE: Right, but again -- well, as you know, on the insurance matter, I had basically the same objection, which is what does that have to do with a 6312 violation? I mean, all of those matters between the insurance company and the client are subsumed within the policy as we heard the witness -- I'm not going to go off on that.

nyway, we're now taking to a second degree of relevance. We first had something that I objected to, you overruled as marginally relevant -- not relevant in my opinion, but marginally relevant and now we're taking yet another step away from the core issues in the case because I'm not sure what this has to do with anything in the case. What count does it relate to in the case?

MR. MER: Can I just say I didn't hear the word "marginal" when Your Honor overruled --

MR. KISE: That was my description, as I just said.

THE COURT: s I told the witness, we are very precise around here. One word or the other could make a big

difference.

MR. SOLOMON: Your Honor, an omission in seeking insurance coverage is relevant. nd if we show that there was knowledge at the Trump Organization at the highest levels of the existence of this inquiry and we actually are going to get to an actual Notice of Violation that was sent to the Trump Organization. The failure to disclose that, if intentional, absolutely goes to the existing claims in this case in the 6312 violations that we've alleged.

MR. KISE: Okay, Your Honor, the 6312 violations relate to financial statements and the submission and use of those financial statements in the course of obtaining loans and insurance. They -- the case as pled and as tried doesn't have to do with every single communication or representation that was made to anyone at anytime by this is the Donald J. Trump Foundation, again, a non-defendant, nonparty. t some level there really needs to be some containment of what we're doing here. This has gotten pretty far afield. So, respectfully, the issue in the case and the claims asserted again relate to statements of financial condition that were inflated, not inflated, whether they were used to obtain insurance, whether they were used to obtain loans, but anything to do with representations to anyone we'll be here until 2025.

MR. SOLOMON: We'll only be here that long, Your

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Honor, if there that many fraudulent misrepresentations or omissions. I have another five or ten minutes on this line. It's not going to take that long. We're going to establish that they knew about these inquiries, they knew about the Notice of Violation, and as you heard earlier today in open court, they did not disclose it to HCC.

MR. KISE: Okay. So, again, the case is about statements of financial condition.

THE COURT: That's a banned word.

MR. KISE: I know it is, but I have to say it in response. I realize that the case is about statements of financial condition and the use of those -- I mean, we can pull out the complaint and look at the claims, so -- and whether or not the insurance company was notified properly or not notified properly about something is as the witness has testified and is clear for the policy subsumed within the policy. The insurance company and the insured and the insurer work that out. If there is something that wasn't disclosed, then they don't cover it.

MR. ROBERT: In addition, Your Honor, they keep using the phrase "they knew." Who knew what and when because there is a policy of insurance that's in evidence. There is specific provisions in that policy as to who is -- who has to have notice in order to have a disclosure. So at some point there has to be some connection of the dots as to

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who knew what at one time. They're uniform. They knew, they knew. Respectfully, it's inappropriate here because there are multiple defendants.

THE COURT: I certainly see that and understand that as an issue. The record will show who knew, who didn't know. So that will be a consideration.

But let me make a general statement that might foreclose or deter other objections. To me, this case is not just about financial statements being submitted to insurance companies. It's about whether or not the defendants were committing fraud, persistent and whatever the pervasive -- whatever the other wording is. nd it's also about what the -- what any alleged, of course, any remedies will be. If it seems to me in taking Mr. Solomon's -- building on what Mr. Solomon said, if the evidence shows that a certain defendant was consistently acting fraudulently if, if, if, then the law provides that there can be all sorts of equitable relief. So I think this is completely relevant. I understand it's not maybe the heart of the case, but it is in the case.

MR. KISE: But, Your Honor, the equitable relief being sought, the equitable relief that can be granted is limited by what they're requesting and the equitable relief cannot be just stop committing fraud generally. It has to be specific. nd so here the case is about don't issue

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false financial statements anymore. That's their claim. That's what they're seeking. That's part of their injunctive relief is stop doing that.

THE COURT: Part of.

MR. KISE: But it can't be just stop committing fraud generally. I mean, there is no provision in the law for that. So any allegation of any claim of any kind that they say is fraudulent is going to come in as evidence of some pattern? I mean, it has to -- everything has to connect back to the case that's been pled and is being proven. Otherwise, there is absolutely no limits on what comes in. It's just anything that they decide to look at and say okay, this is fraud, that's fraud. How are you even supposed to fashion relief in that regard? Stop committing fraud generally? That's a prohibited order.

THE COURT: I have various ideas about how to do that if it comes to it.

MR. KISE: But the point is there has to be some connection to the claims. Otherwise, it's just adrift.

THE COURT: We're going around in circles. The objection is overruled for the reasons I said and that Mr. Solomon said. Let's move on.

MR. SOLOMON: Thank you, Your Honor.

THE COURT: We'll break at five minutes to 1:00.

MR. SOLOMON: Okay. Thank you.

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Q Ms. Dillon, have you had an opportunity to review what is PX 1000?

I did not read it word for word, but I looked at it when you asked me to look at it before, but no, I did not re-review it during the exchange.

THE COURT: You were riveted by the exchange?

THE WITNESS: s a lawyer I was riveted by the exchange.

THE COURT: I was just going to say as a lawyer.

Q Ma'am, if you see on the second page there is a signature above the printed name " llen Weisselberg." Would you recognize Mr. Weisselberg's signature if you saw it?

No, not necessarily.

Q Were you aware that the Donald J. Trump Foundation had communicated in or about June of 2016 with the New York State ttorney General's Office concerning the contribution described in this letter?

Isn't the letter the communication? I'm -- I didn't maybe understand your question. Was I aware of this letter?

Q Yes, ma'am.

Yes, I was aware of this letter.

Q Okay. When did you become aware of it?

Contemporaneous with the letter.

Q Okay.

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MR. SOLOMON: We offer the letter in evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1000 in evidence.)
MR. ROBERT: Objection to relevance. It's a continuing objection.
THE COURT: I understand. Objection noted. Overruled.
MR. SOLOMON: If we could show the witness PX 1002?
Thank you, sir.
Q nd PX 1002 is a letter on State of New York Office of the ttorney General letterhead directed to you, Ms. Dillon, at Morgan Lewis. Do you see that?
Yes, I do.
Q nd the "re:" is the "Donald J. Trump Foundation;" correct?
Yes.
Q nd the title in the center of the first page is "Notice of Violation?"
I see that.
Q Okay. Did you receive this letter in or about September of 2016?
Yes, I did.
MR. SOLOMON: We move PX 1002 into evidence.

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THE COURT: Granted. It's in.
MR. ROBERT: Same objection.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1002 in evidence.)
Q Just a yes or no, ma'am, did you discuss this letter with anyone at The Trump Organization?
Yes.
Q Okay. Just the names of the persons with whom you discussed this letter?
Jason Greenblatt. I don't recall if there were others that I discussed the contents of the letter with.
Q So you don't recall if you discussed the contents of this letter with Mr. llen Weisselberg?
Of this letter in particular, no. I'm not sure if I did or not.
Q Did you discuss the subject matter of this letter, the Notice of Violation, if not the particular letter with Mr. Weisselberg?
I believe I did, yes.
Q Okay. Let's go then to the subject matter of the letter, if not the letter itself.
With whom at the Trump Organization did you discuss the subject matter of the letter?
That would have been as mentioned, Mr. Greenblatt,

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Mr. Weisselberg and Mr. McConney.
Q nyone else you can recall?
I don't believe so. I could be wrong. There was a lot going on at that time, but I think that's the list.
Q Okay. Did you provide a copy of this letter to your client?
Yes.
Q Okay. nd at that time who did you understand your client to be?
The Trump Foundation, The Donald J. Trump Foundation.
Q So who at the Donald J. Trump Foundation did you provide the letter to?
I don't recall who I gave it to. Certainly I would have given it to Mr. Greenblatt and he would have handled that. Would be my -- again, this is a would be. That is my -- yes, to the best of my recollection, it would have been Mr. Greenblatt that I would have provided the letter to.
Q But in your practice, ma'am, if you received a letter from a governmental authority titled, "Notice of Violation," you would have sent it on to the client? Do you have any doubt of that?
I have no doubt that it would have gotten to the clients, but it would have been through client's counsel.
Q In-house counsel?
In-house counsel, yes.

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MR. SOLOMON: Can we please mark as PX 1003 for identification?
nd while you're looking at this letter I will identify for the record it is a letter on Morgan Lewis letterhead. It appears to be your letterhead, in fact, dated October 7, 2016.
Q Ma'am, is that your signature on the second page of this letter?
Yes, it is.
Q nd did you send it to Mr. Sheehan at the Charities Bureau at the New York State ttorney General's Office on or about October 7, 2016?
Yes.
MR. SOLOMON: We offer PX 1003 in evidence.
THE COURT: Granted. It's in evidence.
MR. ROBERT: Same objection.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1003 in evidence.)
Q The first line of this indicates that it is -- excuse me -- that "you are in receipt" -- "we are in receipt of your letter dated September 30, 2016."
nd that's the letter we saw a moment ago, PX 1002; correct?
Yes.

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Q gain, without discussing the substance, with whom did you discuss this response prior to sending it to the New York State ttorney General's Office?
I don't recall who all I've discussed the response with.
Q Do you recall anyone? When you say you all?
gain, this would have certainly been Mr. Greenblatt. It's -- I'm just not sure who I talked to about it. It was a long time ago.
Q Okay. Would you have sent it -- in your practice, would you have sent it to the client for review before sending it on to the ttorney General's office?
Generally I would send things, yes, to the client for review. gain, meaning to in-house counsel at the Trump Organization.
Q So is it fair to say by no later than October 2016 you as outside counsel and The Donald J. Trump Foundation were aware that the New York ttorney General's Office had issued a Notice of Violation and that you were gathering information to respond to that notice?
I was certainly aware of it and certainly the Trump Organization -- or the Donald J. Trump Foundation was aware of this, yes.
Q Were you at that time gathering information to provide to the New York State ttorney General's Office? When I say

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"you," I mean you or someone at your direction?
Yes, we would have been gathering information.
Q Do you know if this Notice of Violation or the need to respond to the request for information were disclosed to the Trump Organization's insurance carriers prior to soliciting either a renewal or issuance of a new insurance policy?
I don't know.
MR. SOLOMON: Your Honor, I'd be moving on to a completely different area. I can start or we can --
THE COURT: I can tell you want a break now. We'll break now until 2:15.
MR. SOLOMON: Thank you, Your Honor.
(Whereupon, there is a recess in the proceedings.)
F T E R N O O N S E S S I O N
THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Please be seated and come to order.
THE COURT: Let's get the witness.
MR. KISE: Judge, while we're waiting on that, just two very brief points. Can I ask the Court to so order -- I believe it's the October 3rd transcript, which contains the original gag order? Because I don't think that was ever memorialized. The first violation last week was memorialized and then, of course, yesterday you entered your order, but the gag order itself was on the transcript. So

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in order for that to be appealable, then we would need to so order that transcript for October 3rd.
THE COURT: I will take care of that. I agree with you.
MR. KISE: Okay. nd then at some point --
THE COURT: One second.
MR. KISE: Yes, sir.
THE COURT: I'll take care of that or I'll get back to you, if there is any issue or problem.
MR. KISE: The other thing, at the appropriate time when the courtroom is empty, a photo of the bench empty so we can lay out what adjoins next to and all that is because I do think that is a matter of interpretation.
THE COURT: Okay. Let me just -- you are -- you want to take a photo of the bench so --
MR. KISE: For the record, yes, Your Honor.
THE COURT: I would suggest, it's up to you, a photo with me here, with you there and I haven't discussed that.
MR. KISE: I don't.
THE COURT: -- or some other person I think it will show if there are people sitting in actual chairs.
MR. KISE: However you would like me to proceed, although --
THE COURT: We can do both.

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MR. KISE: Okay. I'll do that.
THE COURT: Okay. Good. Okay.
nd Mr. Kise, you are about Michael Cohen's size. Maybe you should sit there and I'll sit here.
MR. KISE: I'm not nearly as photogenic as you might think. I'll stay back here.
THE COURT OFFICER: Witness entering.
(Whereupon, the witness enters the courtroom and approaches the witness stand.)
THE COURT: I'll remind the witness, as I always do, that she is under oath.
nd let's continue with the direct examination of Sheri Dillon.
MR. SOLOMON: Thank you, Your Honor.
CONTINUED DIRECT EX MIN TION
BY MR. SOLOMON:
Q Good afternoon, Ms. Dillon.
Good afternoon.
Q Let's turn to conservation easements of particular properties. We talked earlier about Trump National Golf Club L . Do you recall that?
Yes.
Q Can I refer to that as TNGC L ?
Yes, I'll know what you mean.
Q Okay. Do you recall the owner of that property is VH

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Property Corp?
I don't recall that, but I recall a name similar to that, so.
Q We could -- we'll see a document later that has that in there. We'll see if it refreshes your recollection.
Did there come a time that the owner of TNGC L contemplated donating a conservation easement over a portion of its property?
Yes, there was a time that was contemplated.
Q Okay. In my questioning today when I use the term "communication" and I'm doing this because we had a little bit of a misunderstanding with another witness another day, but when I say "communications" I mean, all written, any other form of transmitting or receiving information, okay?
Okay.
Q Thank you.
Do you recall being involved in communications in the second half of -- excuse me.
Do you recall being involved in communications in the second half of 2012 relating to the potential donation of a conservation easement over a portion of TNGC L ?
I do recall during a general time frame being involved in potential conversations. I'm not sure of the exact dates, but.
Q Okay. Sure. Let's see if we can refresh your

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recollection and put a time frame on this.
MR. SOLOMON: sk to mark PX 1446 for identification. For the record, this is a -- the top e-mail chain is from Donald Trump, Jr..
Q The date is 11/16/2012 to Josh Seidner to -- cc's to llen Weisselberg, Sheri Dillon, ndrew Weiss at the Trump Organization and Jill Martin at TrumpNational.com?
Does this e-mail chain refresh your recollection that it was in or about November 2012 that there were discussions relating to a potential conservation easement over TNGC -- a portion of TNGC L ?
I see from the e-mail that it was being talked about in November of 2012.
Q Okay. nd the e-mail chain, you are cc'd on it; correct?
If you give me a second to look through it.
Q Of course. Whatever time you need, ma'am.
I'm sorry, what was your question?
MR. SOLOMON: Your Honor, may I have a read back of my question?
THE COURT: read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Yes.
Q Okay. nd did you receive it in or about November of

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2012?
Yes, I would have received it on or about November 16, 2012.
Q Thank you.
MR. SOLOMON: We offer this in evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. Granted. It's in evidence. I understand the objection.
Q Okay. You've read through the e-mail chain; correct?
Yes, I quickly did.
Q Okay. You'll see that this e-mail chain at the top, the most recent one from November 16th, Mr. Donald Trump, Jr. indicates: "That's great. I'm glad the plans I had in Westchester could be of use." Do you see that?
I see that statement, yes.
Q Okay. nd the "re:" just so we could clarify something is the TIGC L ? Do you see that?
I see the re: says TIGC L .
Q Do people refer to the TNGC L golf course sometimes as TIGC L Trump International Golf Course L ?
Presumably so.
Q When you received this did you understand this e-mail chain was referring to TIGC L ?
I don't know what I thought because it seems to mix and match conversations about Westchester as well as L , so I'm not

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really too sure about that.
Q Sure. Turn to page two of three. It's from llen Weisselberg to Josh Seidner and you are cc'd. Do you see that?
Yes.
Q Okay. "I understand you are working on the conservation easement project for the above-captioned property." The above-captioned property is TIGC L ; correct?
That is what it says that llen wrote and that's where it starts, but rest of the e-mail provides for a lack of clarity.
Q Okay. Did you have an understanding, however, that one of the issues in this e-mail was TNGC L ?
I don't know if it was an issue, but there is a discussion about it from the re: line or appears to be a discussion about it.
MR. SOLOMON: Okay. Let's mark PX 1412, please.
Q Ma'am, you see that PX 1412 is actually an offshoot of the earlier e-mail chain we were just looking at, PX 1466. Do you see that?
I'm still looking at it. Give me just a second, please.
ll right. Could I have the question again, please.
Q Sure. Do you see that this e-mail chain is an offshoot of the earlier e-mail chain we were just looking at, PX 1466?
It looks to be a continuation or it looks to be

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responding to that prior e-mail chain.
Q Okay. On the first page you send an e-mail to Josh Seidner and llen Weisselberg with ccs; correct?
Yes.
Q nd the re: is still TIGC L . Do you see that?
Yes.
Q nd you suggested at the bottom of your e-mail that your colleague, "Bob Leonard, worked extensively with our engineer on another project." Do you see that?
I do.
Q Did Bob Leonard work on the TNGC L potential donation of a conservation easement?
I don't recall. That was a long time ago back in 2012 whether Bob helped me on that or not.
Q Okay. If you go up one on the e-mail chain, 11/26/2012 from Josh Seidner to you with a cc to the same people, Donald Trump, Jr., Donald Bender, llen Weisselberg, ndrew Weiss, Jill Martin, and now Bob Leonard has been added as a cc. Do you see that?
I do.
Q nd Mr. Seidner says to you -- writes to you, excuse me: "Hi, Sheri. I hope all is well. ttached please find the proposed master plan layout for L ."
Does that refresh your recollection that this relates to TNGC L ?

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This part of the e-mail certainly relates to L , yes.
Q Okay. So you agree with me then in or about November of 2012 the owner of TNGC L was contemplating or discussing a potential conservation easement over a portion of the TNGC L property; right?
The owner of TNGC or TIGC L , whichever it might be, appears to have been contemplating one in November 2012.
THE COURT: Well, wait a minute. You say "whichever it might be." I'd like to figure out whether it's one property with two names or two properties with their own name. I have my own opinion, but I'd rather hear from the witness based on everything that's been in front of you, everything you remember, everything you've ever seen. re they the same property or is it two different properties?
THE WITNESS: There is one property that I'm aware of in L that's a golf course.
THE COURT: Which is?
THE WITNESS: I just don't recall if it's a TN or a TI.
THE COURT: Yes, but it's the same property?
THE WITNESS: It's the same property.
THE COURT: Thank you.
Q You'll see in properties later on it's referred to as TNGC L . Thank you for confirming. One property may be

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referred to two different ways?
Correct.
Q Thank you.
On this e-mail -- and when I refer to this e-mail, I am still referring to PX 1412, the one from Josh Seidner to you with the ccs, second line, "Mr. Trump has reviewed this layout and thought it can work for our purposes." Do you see that?
I do.
Q Did you have an understanding as to which Mr. Trump that was referring to?
I may have at the time, but I don't know.
Q Was Donald Trump involved in the potential donation of a conservation easement over a portion of TNGC L ?
I don't recall whether he was involved or not.
Q Was Donald Trump, Jr. involved in the potential donation of a conservation easement over TNGC L ?
I similarly don't recall as to whether he was involved.
Q Same question for Eric Trump.
I don't recall whether Eric was involved. nd part of this might be I don't know what you mean by "involved." ware of?
Q Let's take a step back.
Donald Trump Senior, to your knowledge, did he review the layout for the constraints map and existing conditions?
I am -- sitting here today I don't know which Mr. Trump

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that's referring to.
Q Okay.
THE COURT: But that didn't answer the question.
MR. SOLOMON: Thank you.
May I have a read back, Your Honor?
THE COURT: Read back, please.
nd listen carefully. It's a very specific question.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
I have no knowledge of that one way or the other.
Q Same question for Donald Trump, Jr.?
Same answer. I have no knowledge of that one way or the other.
Q Same question for Mr. Eric Trump?
I have no knowledge of that one way or the other.
Q You'll see how I wrote "cc" on this for Mr. Seidner is to Donald Trump, Jr.?
I do.
Q Does that refresh your recollection as to which Mr. Trump you understood this to refer to at that time?
I'm sorry. That was 11 years ago, 12 years ago. I just don't recall which Mr. Trump that was referring to.
Q nd your e-mail ccs Mr. Donald Trump, Jr.. nd as you sit here today, you still don't have a recollection as to which

Mr. Trump was referred to in this e-mail chain?
I do not have a -- I don't remember. Yes, I can speculate for you, but I don't remember.
Q Speculate for us.
MR. ROBERT: Objection.
THE COURT: Sustained. Speculation is not allowed in court.
MR. SOLOMON: She offered, Your Honor.
Transcript continues on the following page....

Q Did you understand that the potential easement that was being referred to or considered at that time covered all or a portion of the driving range at TNGCL ?
Yes.
MR. SOLOMON: Could we, please, mark PX 1460. Before we do that, Your Honor, I move into evidence PX 1412.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1412.)
Q Ma'am, you will see this is an e-mail chain, the most recent on this chain, meaning the first one, is Jill Martin sent October 9, 2014 to you. Do you see that?
I'm sorry. Yes.
Q Did the project or the consideration of potential easement in 2012 cease for a period of time and then was restarted in or about 2014?
Yes, that's correct.
Q You'll see the bottom e-mail is from Brian Curry to you, the one dated October 9th? Do you see that? 1:25 p.m.?
Yes.
Q Who is Brian Curry?
He was the appraiser retained to work on that project.
Q The TNGCL project?
Correct.

Q You then forward his e-mail on to Jill Martin. Do you see that, in the middle?
I do.
Q First sentence, "Yesterday, we had a call with Donald re valuation of the 16 lots." Do you see that?
I do.
Q Does that refresh your recollection as to which Mr. Trump was involved in the TNGCL project?
Yes.
Q Which Mr. Trump was involved in the TNGCL project?
It refreshes my recollection on who this call was with. It doesn't refresh my recollection on who was involved because I believe both -- I certainly know Don or I don't know. I'm not sure who was involved, but I know who this -- I believe I know who this call was.
Q Who was the call with?
That would be with Sr.
Q nd during the call -- next sentence, I'm reading, ma'am. "During the call, we understood Donald to indicate that the 16 lots (and I believe the rest of the "Phase 2" lots) had a different zip code than the Phase 1 lots" and then it goes on. Do you see that?
I do.
Q Was it Donald Trump, Sr. that indicated during the call that the 16 lots had a different zip code and then the

additional information you provide in this e-mail?
I'm getting a little uncomfortable here with some of my ethical obligations are privileged since we seem to be getting into conversations I had with my client.
MR. SOLOMON: Several things. First off, the privilege belongs to your client, so it is for them to object to privilege, not the witness, as I think you instructed the witness we had here yesterday, Your Honor.
Second, second, if I may, this is an e-mail that was produced in this litigation. Your Honor has already ruled that communications governing valuations and appraisals are not privileged.
THE COURT: Because they involve business, not legal advice; is that right?
MR. SOLOMON: Correct.
MR. ROBERT: Your Honor, first of all, when we get up too soon, we get criticized for objecting too soon by the government and when we wait too long, they criticize we waited too long. Ms. Dillon is appropriately setting forth as a currently licensed attorney and a former attorney for our clients. If she feels uncomfortable, I think it is incumbent upon her and I commend her for making the objection the way she did or at least making it an issue.
We do believe that any conversations, as I said earlier this afternoon, between Ms. Dillon and her former

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clients are privileged. gain, we weren't directly involved in the special proceeding. I do know the Court made certain rules as to what documents were in or not, but when we address the issue with some previous witnesses, the fact that the Court may have ordered a document to be turned over previously in our view, especially since many of the defendants in this case were not defendants in that case were given an opportunity to assert privilege in that case. But once again, we asserted attorney-client privilege in any communication that Ms. Dillon had with those clients is privilege and not the proper subject of inquiry.

THE COURT: Well, I'd rather not because I don't need to address the question of who can object. I see your point. Let's just go to the substance of it. Let me take a very careful read-through of this. I understand that -- not -- you as attorneys were not involved in the special proceeding. I also realize that certain of the defendants were not involved in the special proceedings investigation phase we'll call it. Let me just look at this for a minute.

MR. ROBERT: Yes, sir.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Can I get a readback of the exact question?

(Whereupon, the requested portion of the record was

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read back.)

THE COURT: I guess I have to rule now. I rule that this is business information or advice, not legal advice. I direct the witness to answer. You are not prejudiced to where any other objections depending upon what the other questions are.

Could you read back the question one more time?

THE COURT: Please. My fault.

(Whereupon, the requested portion of the record was read back.)

I'm not sure if it was Don, Sr. or Don, Jr.

Q Is the fact that you're unable to distinguish between Don, Sr. and Don, Jr. with respect to the TNGCL project because they were both involved in it?

It is because I saw from an e-mail that you showed me and my recollection Don, Jr. was involved in a lot of things. His father was involved in very few things, but was aware of a lot of things. nd it's unclear to me who I was talking to then and confirming that Don, Jr. was potentially involved was the fact who was on those prior e-mails. So it is just a little bit confusing to me and it was a long time ago.

Q I understand it was a long time ago, but my question was just a little bit different. Is the reason you can't distinguish who was involved in conversations relating to TNGCL because both Don, Jr., Donald Trump, Jr. and Donald Trump Sr.

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were both involved in the project?

MR. ROBERT: Objection; leading.

THE COURT: Overruled.

nd my answer I think remains the same. One, I don't know what you mean by involved. I would certainly agree that Don, Sr. was aware. I don't think he was necessarily involved. He was the highest level executive at the company and involved is -- seems to suggest more to me as -- that seems to be more of a day-to-day thing as opposed to aware of having a general awareness. So that's the distinction I make.

s far as Don, Jr., I can't remember if he was involved or also aware and whether it was the staff at the Trump Org who was running the show. I just don't recall.

Q I appreciate, ma'am, your distinction between involved and aware of. So when you say "involved," that's day-to-day and when you say "aware," you mean aware of; is that fair?

I would say there's two spectrums, right, and I would say it is not every single detail every day to be involved, but there's also a general awareness which can be a high level awareness on the other hand and there is a spectrum there. So I just want to be clear that I don't know what you exactly mean by involved, but I don't think -- I don't -- in my view, neither of them were involved as I would use the word "involved."

Q Okay. When I say "involved" and I asked you questions using the word "involved," give me anyone on that spectrum you

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just described and feel free to tell me where you think they are on that spectrum. Is that fair?

I think at a high level, Don, Sr. was aware. I think Don, Jr. may have been more aware.

Q That's fair. I appreciate the differentiation between the two and I thank you for that. I want to make clear when I use the word "involved" today, I want you to understand it means anywhere on that spectrum that you just described and if you need to explain your answer to tell me where it falls. Feel free to do so, but it would include someone if they're anywhere on the spectrum you described, okay?

Sure.

THE COURT: No. No. If we are going to refer to a spectrum from aware to involve, I guess it's -- it is involved to aware. Let's not call it the aware spectrum. Let's call it the aware/involved spectrum.

MR. SOLOMON: Very fair enough, Your Honor. I will be guided by that suggestion.

THE COURT: Or some other way, just so we're not saying one end of the spectrum to refer to the whole spectrum.

MR. SOLOMON: How about I use the term "a role in" and then the witness can tell me where it falls between aware and day-to-day involvement? Does that work?

MR. ROBERT: Your Honor, I think this is an

important distinction if he asks a question and the witness needs clarification. It is direct examination. The witness will say, "I can't answer it that way" and explain it her way. I think using a define term will create confusion.

MR. SOLOMON: I'm inviting the witness to explain.

THE COURT: role in -- I would say being aware of something is not necessarily, depending upon your view of language, to have a role in. I'm sure you're creative enough to come up some way to ask the question that doesn't imply the answer and that the witness can explain if she needs to.

MR. SOLOMON: Thank you, Your Honor. We move PX 1460 into evidence.

THE COURT: Granted. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1460.)

MR. ROBERT: Statute of limitations.

THE COURT: Overruled.

MR. SOLOMON: Could we, please, mark PX 944 for identification.

Q Ma'am, this is an e-mail chain between you and Brian Curry with Rick Zbranek as a cc. Do you see that?

Yes.

Q Who is Mr. Zbranek?

Mr. Zbranek was another appraiser at Cushman &

Wakefield.

Q nd was he working on the TNGCL project, to your knowledge?

Yes, he was.

Q In the top e-mail from Mr. Curry to you on October 16, 2014, Mr. Curry writes, "Sheri, I revisited pricing in both lots and home sales scenarios. Numbers come in around 27 to 28 million "-- "MM for the driving range property. That is about 1.7 to 1.75 MM per lot "as is" condition (not if yet fully entitled before land development, time and risk, et cetera.)"

Do you see that?

I do.

Q Did you understand that Mr. Curry was advising you that the driving range property was worth approximately 27 to $28 million?

That seemed to be his preliminary view at that point in time.

Q His preliminary estimate of the value of the driving range property, right?

I think it speaks for itself. He said the numbers come in around 27 to 28, I understood "MM" to be million, for the driving range property and at that point in time.

Q t that point in time. That's all we're asking. t that point in time, the driving range property was the property that was being considered for the potential donation of the

conservation easement, right?

The conservation easement was considered -- the easement that was being considered would be placed over part or all of the driving range property.

Q So if it's over all of the driving range property, it would be somewhere around 27 to 28 million, right?

t this point, I don't recall whether it was all of the driving range property that was being considered. It's been a long time since I looked at these appraisals, so I don't want to commit to something that I don't know if it is true or not.

Q It says for the driving range property. It doesn't say for a portion of it, does it?

Doesn't say for all of it either.

Q But it says for the driving range property, right?

I find that to be sort of an imprecise and it also isn't talking about the conservation easement. It is not talking about a lot of things and if you have more documents, that would be really helpful. I could take a look at them and understand it, but --

Q We will get to more documents, ma'am, but I want to know your understanding at various points in time.

t this point in time, he was suggesting that numbers come in around 27 to 28 million for the driving range property, whatever he means by that.

THE COURT: Just a second. I learned in junior

high school or high school that if you refer to something, you mean the whole thing unless there's some indication you only mean part of it. Now, obviously, I don't know what Mr. Curry was thinking at the time, but -- and there is no jury here. I wouldn't be saying this, but I take the driving range to mean the whole driving range. But, you know, if there's an indication that less than that is meant, fine. nd I'm not sure that's what he meant, but that's how I interpret it.

MR. KISE: Respectfully, Your Honor, we're back to a little bit to where we were yesterday. It is a matter of interpretation. I think the witness has to testify as to what she can relate. Understanding your view, but she can only testify to what she can testify to.

THE COURT: I agree. Thank you. You're right.

THE WITNESS: nd I'm not trying to be difficult here. It is just there's a lot of different pieces to a driving range property. There's things beyond just the driving range and the lots. Does it include the putting range? I don't know. Does it include the huts? I don't know. There's a lot to it, so that's what's complicating this. There's a lot of shorthand and abbreviations used in e-mails that make them very hard to understand.

Q Is that why you at one point in time you instructed your associate not to send e-mails to avoid creating discovery?

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I have routinely throughout my practice, through all of years of practice, I was taught by lots of folks when anything is complicated pick, up the phone. Don't use shorthand. Don't use abbreviations. You will end up with 40 e-mails that make no sense and no one understands even at the time or later, so pick up the phone and give them a call.

Q Do you recall that the driving range was comprised of 16 lots?

The driving range was a driving range with balls and driving range on it.

Q Wasn't my question. Later in the process of the analysis for the donation or potential donation of the conservation easement, the appraiser determined that you could do 16 lots on the driving range property. Do you recall that?

The driving range property when it was being considered for a conservation easement, one of the plans of a hypothetical subdivision showed 16 lots.

Q Okay. 16 lots times he determined roughly 1.7 to 1.75 million per lot, right? You see that in the e-mail?

I see the numbers 1. --

Q When we multiply 16 lots times 1.7 million, we've done this before.

MR. SOLOMON: I ask the Court to take judicial notice that I think that's $27.2 million.

THE COURT: I'm not surprised. I take judicial

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notice.

Q Sound about right?

MR. ROBERT: Objection.

THE COURT: What's the ground of the objection?

MR. ROBERT: He's leading and turning this into a cross-examination. It is a direct examination of a witness they called. Is not "is this right," "is that right." sk open-ended questions and get answers.

MR. SOLOMON: Your Honor, this witness was counsel for the Trump Organization and many entities as she testified. She was an agent. We actually have the right to treat her as a hostile witness and lead on it.

THE COURT: I would agree she can be considered a hostile witness.

MR. ROBERT: This witness has demonstrated no evidence of that at all. She's been incredibly forthright and the fact that a question may be inarticulately phrased, no offense to Mr. Solomon, the witness is being very careful in the words she is using as a careful lawyer. So the fact she may not understand one of his questions or she thinks he is being combative is not what the record demonstrates. She is not an adverse witness and she is not a hostile witness. The government has to continue to treat her and do a normal direct examination.

MR. SOLOMON: Your Honor, the standard isn't how

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the witness is answering the questions. The standard is the witness' status as a former attorney and as a former agent for the Trump Organization and various entities as she testified to. We have a right to treat her as a hostile witness. The word 'hostile' doesn't mean 'antagonistic' necessarily. It is a legal term. We all know that.

MR. ROBERT: The key is former, no longer current attorney. Ms. Dillon is not our current agent. She was a former attorney for our clients. gain, proceed as we have been with other witnesses and so far, things have been going well until the last few questions.

THE COURT: I want to make clear to the witness that by deeming her hostile or adverse, I'm not criticizing her. It is really more of a status situation. Whether or not the answers have also indicated maybe a little bit of body language one way or the other, you could argue that. In any event, objection overruled. I direct the witness to answer.

Do you need a readback or you want to just ask again --

re you asking me to confirm your math?

Q I am just asking you if that sounds reasonable to you that --

1 --

Q If it sounds reasonable to you that the 1.7 to 1.75

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million times 16 lots comes out to in the ballpark of 27 to $28 million as referenced in this e-mail?

THE COURT: We must have 50 calculators in this room.

1.7 million for 10 of them. For six of them at -- probably around that number, but --

Q Thank you.

THE COURT: That answers the question.

THE WITNESS: I use my pple calculator all the time.

THE COURT: We all do.

THE WITNESS: I haven't done multiplication in a while.

MR. SOLOMON: Your Honor, we offer this in evidence if I have not already.

MR. ROBERT: Statute of limitations and relevance.

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

(Whereupon, the Document were marked in evidence as Plaintiff's Exhibit 944.)

MR. SOLOMON: Can we, please, mark PX 1402 for identification.

Q Do you recognize this as an e-mail chain with respect to the potential conservation easement donation for TNGCL ?

Yes.

Q nd you are on this e-mail chain, correct?
Yes.
Q nd the top message, the most recent on the first page is from Jill Martin. Do you see that?
I to.
Q Did you understand that on or about November 2014 she was the assistant general counsel for the Trump Organization?
Yes.
Q Brian Curry, we've discussed. Selim Sawaya, do you see Mr. Sawaya is a cc on this?
I do.
Q Do you know who Mr. Sawaya is?
Yes.
Q Who is he?
He was an engineer.
Q Did he work on the TNGCL project?
Yes, he did.
Q What was Jill Martin's role involvement or awareness on this project, to your knowledge?
Jill Martin was in-house counsel for the Trump Organization in L . She was providing legal advice and assisting one of my primary contacts in connection with the conservation easement.
MR. SOLOMON: We offer PX 1402 in evidence.
MR. ROBERT: Objection; statute of limitations.

THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1402.)
MR. SOLOMON: Can we, please, mark PX 1472 for identification.
Q 1472 is an e-mail chain. t the bottom is from Brian Curry to you with a cc back to Brian Curry and Rick Zbranek. You see "attached"?
Yes.
Q Shortly thereafter on December 12th, you forward it on to Samuel Guthrie. Do you see that?
Yes.
Q Who is Samuel Guthrie?
He was an associate who worked with me.
Q The e-mail from Mr. Curry, the subject is "attorney-client confidential work product." Do you see that?
Yes.
Q When you forwarded on -- withdrawn.
nd it just simply says, "see attached," right?
Yes, that's what Brian Curry says.
Q Right. When you forwarded on, however, the forward on subject "FW: ttorney-client confidential work product," right?
I see that.
Q nd now there is a line added that says "attachments." Do you see that?

I do.
Q "trumpvalueconclusions.pdf," correct?
I see those words.
Q Did you add that description for the attachment?
I don't believe so. I don't know. I have no idea.
MR. ROBERT: Your Honor, it looks like the e-mail from Mr. Curry already has "attorney-client confidential work product" in the subject line.
THE COURT: We understand that.
MR. SOLOMON: Yes, I wasn't questioning that. That's forwarded. The next line, however, where it says "attachments," "trumpvalueconclusions" is not in the e-mail from Mr. Curry to Ms. Dillon.
MR. ROBERT: Correct. That's why this whole document should not be in evidence because it is attorney-client privilege. That makes our point. It was -- the attorney forwarding the document doesn't undo it and you're correct, sir. There is an additional document that is privileged.
THE COURT: Let me try to get to the --
MR. SOLOMON: Your Honor, if you look at the second page, the additional document is "Trump Estates Conservation Easement Valuation." The Court has ruled repeatedly that valuation numbers are not privileged. The appraisal process to get to valuation numbers is not privileged. Only

attorney work product privilege does not make it attorney work product or privileged.
MR. ROBERT: I understand that there is a distinction between business and legal. I think we all get that. Where things get a little blurry is when you have lawyers that need to understand business aspects of a transaction to give legal advice. Here, it is abundantly clear that the information that's in this attachment, while nobody's going to dispute that it is numbers, it is not a legal opinion of an interpretation of a brief or a statute is clearly designed in the process of obtaining information to give legal advice. Therefore, it's privileged. Just because it is a business item doesn't mean that now it's not something that's subject and covered by attorney-client privilege.
MR. KISE: It's also, Your Honor -- it's attorney work product. ttorneys hire all sorts of consultants and experts all day long whether in litigation or outside of litigation. If your client has an issue and you need to understand an issue, you can hire a subject matter expert. It may be a business issue. It might be an accounting issue. You would hire an accountant to provide information that evaluates numbers.
So just because it's numbers and just because it relates to business doesn't mean that it's not valid

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attorney work product. That's what attorneys do all day long. I mean, if we're waiving work product protections and privilege protections simply because there are numbers in the document, that eviscerates the attorney work product privilege and attorney-client privilege in the case.

THE COURT: I have not seen any requests for legal advice or legal advice. Work product, I would be happy to discuss what's your definition or would you like to find the definition of what attorney work product is? Or I know it is not a privilege, what do they call it, the doctrine?

MR. KISE: I don't have to define it. The law defines it and so --

THE COURT: What is the legal definition?

MR. KISE: ttorneys is work product, work product gathered in the course of rendering legal advice. I mean, it's very simple. So if an attorney hires someone to give them information and input in the course of their rendering legal advice, the product itself doesn't have to contain legal advice. It doesn't have to contain a legal opinion. It's something gathered during the course of their work.

THE COURT: Okay. Let's hear -- let's hear from the other side.

(Continued on the next page.)

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THE COURT: Why isn't this attorney work product? What is attorney work product?

MR. SOLOMON: The work of the appraiser in determining the valuations contained on the second page of this exhibit. I assume that's all we're arguing over; is that correct? The first page no one is claiming it is privileged.

So the second page of this exhibit, Your Honor, is work done by an appraiser. It is then forwarded on. The original work done by the appraiser is not privileged merely because the appraiser then sends it to the attorney does not make it attorney work product.

THE COURT: Some of these points are clear. The fact that they label it something, that doesn't make it privilege. The fact that it's forwarded, doesn't make it -- well, it could be waived.

MR. ROBERT: Mr. Solomon is conflating. I think the appropriate inquiry is if you ask the witness was this information obtained by you in the furtherance of you providing legal advice to the client. If the answer is no, then it's free inquiry; if the answer is yes, it would be subject to attorney work product.

It's not up to Mr. Solomon at this point to say what Ms. Dillon needed or didn't need in 2014 to help her render legal advice to her client. That's up to her as the

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lawyer.

THE COURT: I think one thing I remember clearly about work product is the purpose is that other people can't say oh, this is what the attorney is thinking, this is what the attorney is doing, this is not what the attorney is thinking or doing. This is, what, somebody from Cushman & Wakefield, right?

MR. ROBERT: Who is hired to assist the attorney in providing legal advice.

THE COURT: Overruled. It's not the attorney work product. It's the Cushman & Wakefield work product.

MR. KISE: But it's gathered in the course of the attorney's duties and I believe that at least some of these engagements, if not this one, I don't have it here, that Cushman was engaged by the lawyers.

THE COURT: I understand.

MR. KISE: So if I engage as a lawyer and I hire an expert to help me, by definition that's work product. Just because the expert is an appraiser by definition that's work product. That's -- the purpose I'm engaging him is to assist me to render legal advice. I'm not engaging them to assist in facilitating a transaction. If I share that work product later with non-privileged individuals, that's a different story, but we're not there yet.

THE COURT: I believe, again, that I remember the

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language some cases discussing work product. The attorney's thoughts, impressions. This not the attorney's thoughts and impression. Overruled. It's in.

ny questions you want to ask about it, go ahead. It may also be law of the case at this point.

MR. SOLOMON: I was going to cite Your Honor to your September 23, 2020 decision in which the Court said, "Part of the opinion is this Court orders Respondent Morgan Lewis & Bockius to turn over by October 2, 2020 all documents that they have" -- excuse me -- "identified as settlement privilege." It goes on.

"The Court reflects the applicability of any settlement privilege" and then continues with "Morgan Lewis to produce to petitioner by October 2, 2020 all documents related to the," quote, 'preliminary valuations' closed quote, "of the Seven Springs easement as documents related to a preliminary valuation are of a business and not of a legal nature."

THE COURT: Well, that's the privilege. That's not work product. By the way, I made a ruling. It was either not appealed or affirmed. I'll change my mind if I think I was wrong, but I don't think I was wrong.

MR. KISE: gain, Your Honor, I know Your Honor loves that phrase, but as Your Honor's already pointed out, work product and privilege are two different things.

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Second, it's not that -- if individuals or entities that were not parties to that proceeding are here now, their privilege isn't waived. I mean, it's not possible to waive in perpetuity a privilege for some stranger to a proceeding. nd so those individuals and entities are entitled to assert the privilege and they're entitled to assert work product protection at this stage because they wouldn't have had any opportunity at the prior stage.

THE COURT: I understand.

MR. KISE: There would be no waiver based on that. So while I appreciate Mr. Solomon read, I'm sure, accurately from the prior determination, that would have no bearing on individuals or entities that were not participants in that process.

THE COURT: Yes, I understand waiver is a partial and fallback argument, but I don't think -- it's certainly not privileged. I don't believe it's work product either. So let's proceed.

MR. SOLOMON: Can we have it offered into evidence?

THE COURT: Over objection, it's admitted into evidence.

Q Please look at the second page, ma'am.

Did you understand this to be the value conclusions from Mr. Curry for the potential conservation easement over the demonstrative driving range at TNGC L ?

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Looking at this document today I don't know if this is the document that was attached to the e-mail you've got. ssuming that it is, I assume this to be some sort of preliminary value conclusion. I don't know if it's a final conclusion. I don't know what it is in isolation, but it is something that shows some valuation numbers. I don't know in what context. If you had other documents -- the final ones are in the appraisal. I know what those are, but these I don't know.

Q I understand, ma'am, but I want to establish the knowledge that you had at various points in time, okay?

I understand there is a -- you think there is a final appraisal. We'll get to it whatever you think it might be. My point is different. t this point in time, you had received Trump Estates Conservation Easement Valuation from the person at Cushman & Wakefield that was tasked with appraising the value of the potential donation of a conservation easement at TNGC L ; correct?

nd, again, I'm sorry, I'm a lawyer. I'm precise. That's what I do. I get paid to be precise. I get paid a lot to be precise, so my problem is if you want me to assume this was attached to that e-mail, I can't coordinate these dates for you because there is no date on what I'm looking at, so I don't know what point in time. I agree at some point in time this appears to be prepared. It doesn't say Cushman & Wakefield on

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it. I don't know who prepared it. This looks like lots of things I've seen. I've seen many, many, many of these and I'm sure you have, too, by now so I can't connect those dots for you. I would like to. I'm not trying to be -- I prefer to go home instead of sit here, so I'm not trying to delay this. I just can't give you what you want.

Q See if we can approach this another way.

This is how it was produced to us, these pages together, number one.

Number two, "VE" on the bottom, Vincent & Elkins, it was produced by your prior firm, okay? I am making that representation to you that that's who it came from and that's how it was produced as one document. That was in fact an attachment to the December 2014 e-mail, okay? Can you accept that? Can you accept that representation?

I didn't produce the document, so yes, I'll accept -- I'm not trying to quibble with you. ll I'm trying to say is this has no date on it. I don't know. It's an e-mail on that date. I'll agree with that it had an attachment of some sort. Is this what was attached to that e-mail? If you say so, all right.

Q Okay. Let's go based upon that, please?

Okay. So your testimony is that this --

Q No. My representation to you, ma'am?

My representation.

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THE COURT: We agreed to be precise.

Q So this second page, if you see note one is before condition. On the top line, "development and golf course property value before condition note one;" right?

Yes, I see that.

Q nd if you look down bottom, the note says, "60 lots and golf course without driving range;" right?

Yes.

Q Okay. "Less development and golf course property value after condition." That's note two; right?

Yes.

Q nd note two is "44 lots and golf course without driving range;" right?

Yes.

Q Okay. You don't need to grab a calculator. 60 minus 44 is 16? That's the 16 lots I made the representation to you about earlier when I asked you to do the math and we did the math together; right, 16 lots?

I don't think we did math on 16 lots. We did math on the value.

Q Yes. 16 lots times approximately 1.7 million per lot. Do you recall that?

Yes, but we weren't -- yes, but the question wasn't 16 lots. It was what was the value. That's what we were doing before was the math.

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Q You questioned whether there were 16 lots on the driving range and I told you I was going to show you later that there were in fact 16 lots on the driving range and that's what I'm doing here. Do you see that the before and after show a difference of 16 lots?
I see 16 lots here, but my memory tells me there are many -- there are different configurations at various points in time and it wasn't always 16.
Q Is it 16 here?
It's 16 on this document, yes.
Q Thank you.
So reading this now and assuming this was the attachment to the e-mail cover, okay, Mr. Curry comes up with a valuation for the development and golf course property before the condition of 108 million; right?
108 million. I see that on the page, yes.
Q Okay. nd then the value after the condition is 82 million. Do you see that?
I see the total value after is 82 million.
Q Okay. So by no later than December of 2014 you had received information that the value of the golf course according to Mr. Curry before the condition was 108 million; right?
Yes, if this document was attached to the December 12th e-mail, then yes, this shows the 108 million.
MR. SOLOMON: Okay. Let's mark PX 1464 for

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identification.
THE COURT: Five-minute warning.
MR. SOLOMON: Yes, Your Honor.
Q Do you recognize what's been marked as Exhibit PX 1464?
I recognize -- I don't specifically recognize it, but yes. It's an appraisal report.
Q Okay. nd you'll see that on the page five of 160 it's signed by Brian Curry?
Yes.
Q nd also by Richard Zbranek?
Yes.
Q Did you receive this appraisal report on or about March 12, 2015?
I'm not sure when I received it, but it is dated March 4, 2015 in the cover letter and it was sent to Ms. Jill Martin. So I don't know when I got it, but somewhere around that time frame.
Q Go back to the first page of the exhibit.
Okay.
Q E-mail?
The e-mail.
Q Yes, ma'am. Thank you.
You'll see that it was originally sent to Sam Guthrie and on March 12th -- Samuel was -- is a he?
Yes.

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Q He forwards it on to you on March 12, 2015; right?
Yes.
Q Okay. So by no later than March 12, 2015 you had this appraisal; correct?
Yes.
Q Okay.
MR. SOLOMON: We'll offer this into evidence.
MR. ROBERT: Objection. Statute of limitations and the appraisal itself is hearsay.
THE COURT: I assume it's notice not for the truth of its contents. Objection overruled. nd it's introduced solely for notice, not the truth of its contents.
MR. KISE: Notice to whom? To Ms. Dillon?
THE COURT: Plaintiff, you're claiming notice to anyone else?
MR. SOLOMON: The interior letter on the appraisal itself is directed to Ms. Jill Martin as the witness testified.
MR. KISE: I'm looking at the top of the e-mail, that's fine. If that's the case, I want to be clear.
THE COURT: So just Jill Martin.
MR. SOLOMON: Jill Martin originally and it was forwarded to Samuel Guthrie who was --
THE COURT: Two people?
MR. SOLOMON: t a minimum.

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THE COURT: Deal.
MR. KISE: s reflected in this exhibit, that's who is the notice, not at a minimum, if they're not in here.
THE COURT: It could have been shown to other people.
MR. KISE: It could have been --
THE COURT: I understand just for purpose of notice to those three people.
MR. KISE: Correct.
THE COURT: I told you we understand each other.
MR. SOLOMON: Your Honor, before I go into this in depth, you have given me a five-minute warning.
THE COURT: bout four minutes ago, so let's take a break now. 15-minute break and I'm starting again in 15 minutes.
(Whereupon, there is a recess in the proceedings.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
THE COURT: Notice that Rock & Roll song, "Can I get a witness?" "Can I get a witness, witness, witness?"
THE COURT OFFICER: Witness entering.
(Whereupon, the witness enters the courtroom and approaches the witness stand.)
THE COURT: Please continue.
MR. SOLOMON: Thank you, Your Honor.

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CONTINUED DIRECT EX MIN TION
BY MR. SOLOMON:
Q Ms. Dillon, can we turn to the appraisal which has been marked as PX 1464?
Yes.
Q You'll see on the cover of the appraisal itself, it's dated as of December 16, 2014; correct?
Correct.
Q nd that is the valuation date; right?
I believe so, yes.
Q Okay.
I'd have to confirm it on the inside.
Q Please take a moment. I'm sorry if I misspoke. It's December 26, 2014 is the date on the cover.
Yes, and that is the valuation date.
Q Okay. The fourth page is the letter addressed to Jill Martin. Do you see that?
I do.
Q nd I had mentioned to you an entity VH Property Corp as one of the owners. If you look at the fifth line down there is a reference to property owned by VH Property Corp and VHPS LLC (collectively, the "Donor") and "donor" is in quotes. Do you see that?
I do.
Q Does that refresh your recollection that the owner of

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the property were those entities?
Yes, to a degree.
Q What do you mean by "to a degree?"
Well, I'm not sure if it was VHPS LLC that directly owned it or if it was Property Corp, but it was in a structure and those were the ultimate -- I think one owned through the other. I just can't quite remember the setup.
Q Do you have any reason to believe the information contained in this cover letter is inaccurate in any way with respect to the owner of the property?
No. It's just a little unclear, perhaps.
Q Turn to the next page. You'll see there is a chart Valuation Summary. Similar to what you saw in that attachment to your e-mail; right?
Yes.
Q Has the before condition property as note one; right?
Yes.
Q $107 million; right?
That's what it says.
Q Okay. nd is that your understanding of Mr. Curry and Mr. Zbranek's conclusion as to the value of the TNGC L property before the condition?
It is my understanding that is the before condition of the property they valued as 107 million.
Q Okay. nd the after condition, 82 million; right?

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That is what it says.
Q nd that gives you -- I think you explained the math and how it is -- the value of the easement would be $25 million?
Well, unless there are some other adjustments, but that appears to be what they valued the easement as.
Q So the next line is 25 million?
Yes.
Q nd then they didn't have to make any adjustments, N/ ?
They did not make any adjustments.
Q I'm sorry. Please finish your answer.
Yes, it said "not applicable" so there are no adjustments. There is a difference. It's not zero. It's not applicable.
THE COURT: Make sure she's completely finished and try not to keep saying okay, okay, okay. Just ask your next question.
Q Line E, which is "C-D, conservation easement 25 million." Do you see that?
I do see that.
Q Did you understand that to be the conclusion of the valuation of the conservation easement?
I understood that to be the estimated fair market value of the conservation easement as of December 26, 2014.
Q If I could ask you to turn to page 156 of 160 in the exhibit.

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156, did you say?
Q Yes, of 160. You'll see there are small numbers on the bottom of each page.
Yes, give me a second. I'm on the wrong --
Q Of course.
Yes, I'm there.
Q Do you see the chart in the middle of the page, "Sales Price Per Hole Value Estimate?"
I do.
Q nd the sale price per hole conclusion is $15,800,000. Do you see that?
Yes.
Q What understanding, if any, did you have or do you have as to what that number represents?
It has been a long time since I've looked at this, so I need to read around it to better understand it. I have no recollection sitting here today it was another way of valuing things. I just don't recall what it was doing. This is a backup for their work product.
Q If you look at the top of page 156, the title is "Price Her Hole." Do you see that?
I see that. If you want me to read this, then maybe I can help you, but it's going to take me a minute to get there. It's been years since I've read this valuation and it was complicated because of the golf course property, the driving

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range property, and the concept, the hypothetical subdivision, and lot.

THE COURT: Wait. Just to try to save time. If he asks you if you see the title of a paragraph, just yes or no. You don't have to say that you haven't read it. We understand that.

THE WITNESS: Okay. So if all he wants me to do is verify the words, yes, I see price per hole, yes.

Q Do you have any understanding as to whether that $15.8 million number is the estimated value for the golf course property?

No, I don't have an understanding without having read some of this.

Q Let's go back to the earlier chart that we were looking at where the number was, if I recall correctly, $107 million. nd that's on page five of 160?

Ma'am, it is --

Q Ma'am, it's up on the screen, if that helps you.

Not really. Okay, yes.

Q Did you ever discuss with anyone at the Trump Organization the Valuation Summary that valued the before condition of the property at $107 million?

My discussions with my --

Q Yes. It's a yes-or-no question.

MR. ROBERT: Objection.

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THE COURT: It's a yes-or-no question, isn't it?

MR. ROBERT: I think we're getting into issues of attorney/client privilege. He's now asking the substance of a conversation.

THE COURT: No, I think he asked her did she ever discuss it with anybody at the Trump Organization.

Let's have a read back of the question.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

MR. ROBERT: That would be in consultation with providing legal advice. The questions that --

THE COURT: But it's not the advice. He's allowed to ask that question, no doubt about it.

nswer the question, please.

I don't remember whether I discussed specifically the -- did you say the before condition of the property of 107 million?

Q That was my first question.

Yes, I don't recall if I discussed the before condition of the property at 107 million.

Q Did you discuss with anyone at the Trump Organization any of the information contained on the Valuation Summary?

MR. ROBERT: I'll just have a continuing objection to this line, Your Honor.

THE COURT: Okay. Understood. Overruled.

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Not sure what you mean by "discussion," but I certainly -- Jill Martin had the conservation easement showing it was valued at $25 million, so I'm sure at some point I shared that information with her and perhaps with others that this was the final value conclusion so that they could make a decision as to what they were going to do.

Q You say "perhaps others," which others?

gain, we had a long list of people that might have been involved in the project, so I'm not sure who was steering the project besides Jill Martin. It might just have been Jill Martin, it might have been any of the others that I talked to.

Q Okay. I wasn't asking who was steering the project. I asked with whom you discussed any of the information on the Valuation Summary.

I do not remember who I would have spoken to some ten years ago.

Q nd let me be clear. Do you recall any communications -- and remember I gave you that very broad definition of communications earlier today? Orally, written or any other form of transmitting or receiving information.

Did you have any communications with anyone at the Trump Organization concerning any of the information on the Valuation Summary?

Sitting here today, I am confident I would have had some communications about valuation with some people at the

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Trump Organization. Sitting here today, ten years later, I don't recall who that would have been with other than Jill Martin.

Q Did you send a copy of this appraisal to anyone at the Trump Organization at anytime?

I can't recall sitting here today whether I did or not. Jill had it, so I'm not sure if I was transmitting anything or if they were getting it from Jill. I don't remember.

Transcript continues on the following page....

Q Who would be getting it from Jill? Who are you referencing in that last answer?
It would be whoever she would send it to. I don't know. Yeah, they would have needed it at the Trump Organization.
Q What do you mean by "needed it at the Trump Organization"?
They would have needed documentation to know what they did.
Q So who at the Trump Organization would need that documentation to know what they did?
MR. KISE: Objection. Calls for speculation.
THE COURT: Without speculating, who, if any, would have received this?
nd so who do I think Jill would have sent it to if I don't recall who I sent it to? Is that the question?
MR. SOLOMON: That was not the question, Your Honor. May I ask for a readback?
THE COURT: Readback, please.
(Whereupon, the requested portion of the record was read back.)
MR. KISE: gain, Your Honor, that's just -- now that I see it read back, it's just complete speculation. How would she know anything about internal affairs of the Trump Organization?

THE COURT: Well, she dealt with them.
MR. KISE: It doesn't appear that the witness remembers who she sent it to herself much less who in the Trump Organization might have received it. It appears to call for complete speculation.
MR. SOLOMON: Question wasn't who might have received it. The witness testified she understood it would have been sent to whoever at the Trump Organization needed it. nd my question was specifically tailored to that last answer as to who she was referring to when she said who at the Trump Organization might have needed it.
MR. KISE: I don't think she was referring to anyone. I think she was just simply saying when you say I don't --
MR. SOLOMON: Counsel, your thinking of who she might have been referring to is not relevant. The witness' stated who would have needed it. I asked her who that was.
MR. KISE: She said whoever might have needed it would get it.
MR. SOLOMON: I'm entitled to ask who she was referring to.
MR. KISE: I'm entitled to say it is calling for speculation because I don't know if this witness is capable of knowing that.
THE COURT: Overruled. If she doesn't know, she

doesn't. If she can tell us, she'll tell us.
Could we have the question again, please?
THE COURT: For a third time, yes. Let's have it read back.
(Whereupon, the requested portion of the record was read back.)
nd it -- to the extent anyone wanted to use it to support a charitable deduction on a tax return, the people that would need it would be the accountants and most importantly, the outside accountant who prepared the returns which would be Donald Bender.
Q You said 'the accountants' and then differentiated "the outside accountants." The first accountant, were you referring to the inside accountants at the Trump Organization?
Yes.
Q Okay. Who were those people?
The person that probably would have needed it would have been Jeff McConney.
THE COURT: Try not to say, "okay."
MR. SOLOMON: I'm sorry, Your Honor.
THE COURT: That's okay.
MR. SOLOMON: Could we, please, pull up PX 731 native which is in evidence and go to lines 381 -- let's start at the top of the document first.
Q This previously has been identified as what's known as

Jeff Supporting Data or the Supporting Data for the Donald J. Trump nnual Statement of Financial Condition and this is the one for June 30, 2015.
MR. SOLOMON: Could we, please, go to lines 38 through 404.
Q You'll see that for the year ending 6/30/2014, the total valuation for Trump National Golf Club L is $213,690,642. Do you see that?
MR. ROBERT: Objection.
THE COURT: Grounds?
MR. ROBERT: There is no foundation this witness even knows what this document is. He's just asking her if she sees something on a page up on a screen.
THE COURT: Okay.
MR. SOLOMON: I'm getting there, Your Honor. I'm just asking if she saw that number on the screen.
THE COURT: Objection sustained. I think we need to know context of what this document is.
Q You mentioned Jeff McConney --
MR. SOLOMON: Sorry. Your Honor, we need to know?
THE COURT: What this document is and the witness certainly might need to know what this document is.
MR. SOLOMON: nd I represented that this is Jeff McConney Supporting Data. That's why we went to the top, the June 30, 2015 Statement of Financial Condition of Donald

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J. Trump.
THE COURT: ll right.
MR. SOLOMON: It is in evidence, Your Honor.
THE COURT: Okay. nd maybe I should have --
MR. SOLOMON: I understand the witness may not have seen this document before. That's not what I'm asking.
THE COURT: That's what I want to get into.
Q What I want to show the witness is as you see as of June 30, 2015 the valuation for TNGCL according to this document is $140,710,895. Do you see that?
MR. ROBERT: Objection.
THE COURT: Overruled. Maybe the question was -- I don't know whether the question was proper before or after, but now it is proper. It has been identified and he's just asking if she sees the number on the document. Overruled.
Q nd you recall --
THE COURT: Did we get an answer? Did we get an answer that she saw the number?
Q Do you see that, ma'am?
I see the number sitting here right now in this courtroom on that screen.
Q Thank you. nd you recall the appraisal that we just saw had valued the entire property at 107 million before the donation of the conservation easement? Do you recall that?

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I -- I want to take a step back first. I think --
Q Ma'am, my question was do you recall that the appraisal that we saw earlier on the chart on page 5 of 160 valued the property as you agreed at $107 million before the easement donation? It is a yes or no.
MR. KISE: Objection, Your Honor. Mr. Solomon is using this witness to make some sort of closing argument. He's trying to get the witness to close the loop on connections between documents, one of which the witness hasn't even seen before today and she's just -- the only answer she's given is, "Yes, I can see" like I could give that answer, "Yes, I see the number on the screen says 213 million;" but there's no foundation for her to go ahead and now extrapolate, "I see this appraisal," "I see Jeff McConney's spreadsheet" and somehow there is an interconnectivity there. There is no foundation at all for this. It is totally improper to question this witness about something she knows nothing about.
MR. SOLOMON: Your Honor, I haven't asked her to extrapolate anything. I asked her if she saw the number on the screen and I asked her if she remembers a number on a document that she identified that is in evidence for notice.
THE COURT: I don't think that proves much necessarily.
MR. KISE: Notice to whom? We are back to that.

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We established before that the only people that was introduced for notice for did not include Mr. McConney, that I'm aware of. It was the people that were on the e-mail. That was what was agreed to when we introduced the document.
THE COURT: You're objecting to the question or the number's different? Is one number and one number is B?
MR. KISE: If that's all he is asking, does this number on that page says this, and this number on this page says that.
MR. SOLOMON: So the record is clear, the witness also said that since this was on the tax return as a deduction, it would have been sent to Jeff McConney.
MR. KISE: No. No, Your Honor. She did not say that. She said who might need it, might need it, but she didn't testify that that's exactly who it was sent to. She can't possibly do that because she doesn't know who it was sent to. He is now putting words in her mouth which is the danger of going down these lines of questioning.
MR. SOLOMON: Your Honor, I will stand on the record transcript as to what the witness testified to with respect to Mr. McConney in receiving what I'm assuming this appraisal.
MR. KISE: Your Honor, she didn't testify that Mr. McConney received it because she can't probably do that.
THE COURT: You know, one thing that even though

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I've been judge for over 20 years, I feel like I'm learning more in this case than others, which is we don't deal with -- we don't deal with speculation, the court system. We don't deal with speculation, but we don't deal with certainties either. If somebody says, "Well, I think this person could have" or "I would have" or "This is how I normally did things," it is up to the trier of fact to decide whether it happened or not.
MR. KISE: I would respectfully disagree particularly when it comes to things like intent of a criminal statute. You can't just assume that someone received a document and then ignored it which is exactly what the ttorney General is asking. That's where they're going with this is they're trying to establish through a witness who would have absolutely no knowledge whether Mr. McConney actually received something from Jill Martin.
The right witness to ask is Jill Martin or Mr. McConney, but certainly not this witness. We can't skip over the part where we establish that Mr. McConney actually had a copy of this document and, therefore, would have acted or not acted in a particular way. That's clearly what they're trying to establish, to just back-door here knowledge, actual knowledge and, therefore, intent which they'll argue later that Mr. McConney acted in a certain way or failed to act in a certain way. They can't presume that

based on a witness who has absolutely no basis to conclude one way or the other whether or not Mr. McConney would have received this document.

THE COURT: We have a fundamental difference about that. Let me ask you a hypothetical. What if there's proof, solid proof that this witness, and this is a hypothetical, had mailed it to Mr. McConney? We don't -- but we don't have Mr. McConney saying, "Yes, I received it." Could the trier of fact conclude that yes, he received it?

MR. KISE: We don't have that evidence. Your hypothetical assumes facts not in evidence. So if they were to establish that -- if they were to establish, for example, that this witness actually e-mailed it to Mr. McConney, yes, then they would be able to establish that, in fact, this witness would have a basis to know or it would be reasonable for her to conclude that Mr. McConney received it because of the fact of sending.

We have none of that here. What we have is a witness who has been more or less forced to speculate as to who might need it within the organization based on her knowledge and now they're taking that to mean that Mr. McConney, in fact, received it and they're comparing it to Mr. McConney's spreadsheet which the witness has never seen before today it would appear and doesn't have any ability to

testify about what any of these numbers on the page mean and connecting the dots.

THE COURT: The number says what it means.

MR. KISE: Well -- but there's a lot of different numbers on here than when you compare them on the valuation and the appraisal. They're oversimplifying and conflating communications, oversimplifying comparison and conflating the communications with a witness who, again, has no basis to know what, in fact, was actually sent or received. If she said it, that's a different story. If they would like to establish that, then okay, then establish that; but they haven't established that.

THE COURT: Mr. Solomon, who goes first, me or you?

MR. SOLOMON: Your Honor, I've learned if you're going to rule in my favor, to sit down, grab my briefcase and leave the courtroom.

THE COURT: Mr. Kise, have we established that we don't need the alleged recipient to say, yes, I received it? There are other ways that a trier of fact can conclude that somebody received something.

MR. KISE: There is, but you have to actually do that. I mean, of course, there are other ways. gain, you pointed out if this witness were to testify "I e-mailed it to Mr. McConney," if this witness testified, "I Federal Expressed it to Mr. McConney," if this witness testified, "I

mailed it to Mr. McConney," that would suffice. But what you have here is a witness speculating on who might need it within the organization, "might" being the operative word, and no indication from this witness who is being examined about this at this moment, whether or not Mr. McConney, in fact, received it one way or the other. There's no indicia. I don't think the witness could possibly tell you whether or not it was even sent to him. ll she has testified to is what she thinks might have happened. That's not sufficient to establish receipt or even delivery.

THE COURT: We're talking preponderance standard here, 51 percent.

Mr. Solomon, would you explain as specifically as you can what you think the witness has testified to that would indicate in any way that Mr. McConney had received the -- this, whatever we're calling it, origin document.

MR. SOLOMON: The fact -- number one, the fact the witness testified that it was used for tax deduction and that she would have to send it or the recipient would have to be the accountant and the outside accountants. I asked her who. She differentiated between inside and outside. The inside was she identified Mr. McConney, but I didn't want to interrupt Mr. Kise and I think, Your Honor, we can settle this in one quick and easy moment. If the Court looks at line 393 on Mr. McConney's spreadsheet, "per

appraisal."

MR. KISE: Right. Which appraisal? That's a different -- that's yet a different number. gain, I'm not sure exactly what Mr. Solomon -- he's smarter than this. I don't know what he's trying to establish. I mean, truly, you can't have this witness testify about who would have received something, maybe might. It's not possible. nd it's not possible to connect up -- if they -- if they want to call Ms. Martin to testify, if they want to call Mr. McConney and ask him about it. I mean, while we're at it, she said that Mr. Bender -- she said that Mr. Bender might have received it or would have received it as well. Is that then to mean Mr. Bender -- we can assume in evidence now that Mr. Bender, in fact, received it?

THE COURT: I don't think it is a question of assumption. It is an issue of fact. I think they raise that issue.

MR. KISE: So then we are to say here that Mr. Bender, in fact, received this appraisal as well. Based on that testimony, she said Mr. Bender and Mr. McConney. So if the sauce for the goose is sauce for the gander as you say, so if, in fact, we're going to presume now that based on this witness' testimony, which is speculation, that Mr. McConney received it, well, then -- then the same fact has to be assumed with respect to Mr. Bender. I don't think

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either makes any sense, frankly, but if you're going to allow one, then you have to allow that it is a fact now established in the record that Mr. Bender --

THE COURT: If you want to try to bring that out on any sort of questioning, feel free. I'm not going to go there now.

MR. KISE: But there's no way to do one without the other respectfully.

THE COURT: I made my ruling. Enough. I made my ruling.

Mr. Solomon, where are we? I would like to know how we know what -- how we connect that 50 million and change number to a particular appraisal if we can or you can just withdraw that point.

MR. SOLOMON: No. I was just pointing out to Your Honor that the spreadsheet said "per appraisal" as to the question with respect to Mr. McConney. The number I was focusing the witness on is the line on 404 and I don't mean 404 error, I mean line 404 on the spreadsheet value as of 6/30/2015 is 140 million and I --

THE COURT: I know what number you're trying to get to.

MR. SOLOMON: Right. I'm sorry.

THE COURT: I think you were trying to show that Mr. McConney must have seen the appraisal because it says

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"per appraisal," but it doesn't say which appraisal. But if the number is the same, then I'll, as the trier of fact, could say, "Oh, that's the appraisal that the number came from."

MR. KISE: But it isn't the same number.

THE COURT: Okay. So I'm not reading anything into that because we don't know what appraisal it was, but everything else stands.

Q Ma'am, before today, were you ever aware that as of June 30, 2015, the Trump Organization valued TNGCL property at $140 million?

I was not aware of -- I've never seen this document. Everyone seems to accept that, so I don't even know what this is. I don't know what it's valuing. I don't know what it's doing, so I don't know what the $140 million -- I've never been aware of what they, otherwise, valued Seven Springs at in -- at that time. I've certainly seen things in the news since that time.

Q Okay. I think that was just a mistake in your answer and let me clarify for the record. You said Seven Springs?

Oh, I'm sorry. California.

Q It is a simple yes or no. Prior to today, were you aware whether the Trump Organization valued TNGCL as of June 30, 2015 at $140 million? It is a yes or no.

THE COURT: That's a yes or no.

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THE WITNESS: You all think this is simple, Your Honor. Respectfully, there's been so much in the news about this, I don't know if I've heard this before or not. m I aware? Do I have personal knowledge of it? No. Have I heard it in the last? I don't know. Two years since this case has been going on, probably. I've heard various numbers at various times that there's a value disparity supposedly, allegedly and I, you know -- was I aware of any of this realtime? No, if that's your question.

Q Sure. Let's talk about prior -- you said realtime so, that may only be at one point in time.

Prior to the filing of this action, were you aware that the Trump Organization valued TNGCL at $140 million as of June 30, 2015?

I was not aware of the spreadsheet. I'm not sure what they did with that number, so I don't know. Nothing to do with the spreadsheet? Is that your question?

Q Yes, nothing to do with the spreadsheet. nd ma'am, let's be very clear. I'm just asking if prior to commencement of this action, were you aware that the Trump Organization valued TNGCL at $140 million as of June 30, 2015; yes-or-no question?

No.

Q Did you ever discuss with Jeff McConney in form or substance how he should value TNGCL ?

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MR. ROBERT: Objection. You are now getting into legal advice that would have been given to a client.

THE COURT: That's business advice, not legal advice.

MR. ROBERT: They're consulting their attorney who is a tax attorney to give them tax advice. This is not a business consultant. They're not talking to the appraiser. The question was did you ever talk with Jeffrey McConney in form or substance how he should value.

THE COURT: It is not asking for the substance. Did they ever discuss? Overruled. They are allowed to ask what was discussed. When it comes to a business advice request, that's something else. So we're getting close to that maybe, but we're not there yet.

Q It is a yes-or-no question.

Could you read it back, please?

THE COURT: Read back.

(Whereupon, the requested portion of the record was read back.)

No.

Q Did you ever discuss with anyone at the Trump Organization how they should value TNGCL for purposes of the Statement of Financial Condition?

Not to my recollection other than -- let me correct that. I did discuss how it was valued for tax purposes and

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for, you know -- I made -- when we had the appraisal, so certainly again -- are we including Donald Bender in the Trump Organization or is he an agent? I don't know where he fits in.
Q Let's include him for the moment.
I would have discussed it with Donald Bender because he has to attach the appraisal to the tax return, so I would have sent him the appraisal and discussed it with him and explained the appraisal to him, so he would have known the value to report on the tax return.
Q Other than Mr. Bender, did you discuss the valuation of TNGCL with anyone at the Trump Organization in connection with the Statements of Financial Condition?
I do not believe so, no.
Q Did you ever discuss with anyone at the Trump Organization, and let's exclude Mr. Bender for the moment, anyone at the Trump Organization the valuation of TNGCL ?
I don't -- I don't recall. Over the years, I'm sure it may have come up at some point in time, but I don't recall any specific conversations about that.
Q Do you recall any general conversations?
I don't recall whether we ever had any or not.
Q Did you ever discuss with anyone at the Trump Organization? nd for purposes of this --
Can I correct my last answer?
Q Please.

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I certainly would have had conversations with Jill Martin when we were doing the appraisal for the federal income tax purposes which is a very unique kind of appraisal.
Q nyone else?
I'm trying to think and remember.
Q Please.
I don't believe so.
Q Would you have discussed it with Mr. Weisselberg since this had to do with tax planning purposes? nd I mean llen Weisselberg.
I don't believe so, but people would have been aware and I would have -- the bottom line, would have been discussed, the value of the conservation easement is what would have been a topic.
Q What about the valuation of the property?
The valuation of the property as a whole? I don't recall having conversations about that.
Q Let's turn to Briarcliff Manor.
Yes.
Q Do you recall that property?
Yes.
Q That's the property located in Westchester?
I believe it is located in Westchester. It's been a while since I've been there.
Q That's owned by Briarcliff Manor, LLC, right?

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I would have to look at a chart. If you want to represent that, I'll -- I accept your representation.
Q We'll get to it in a document later on. I don't need to represent that, ma'am.
Did there come a time that you were consulted in connection with the donation of a potential conservation easement over a portion of that development?
Yes.
MR. SOLOMON: Could we look at PX 157, which I believe is in evidence already.
Q Ma'am, feel free to look at whatever you need to answer my question, but I'm going to start with is that your signature on page 9 of 11?
Yes.
Q If you look at page 4 of 11 and look at "intended use," "To estimate the value of 71 hypothetical residential units located at Trump National Golf Club Westchester, 1 Shadow Tree Lane, Briarcliff Manor, New York, (the "property"). Do you see that?
Yes.
Q Do you now -- withdrawn.
Do you recall that the task for the Briarcliff property was to determine the value of a potential donation of a conservation easement over 71 hypothetical residential units?
I'm sorry. I was looking at this. I didn't quite

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catch the question. I was trying to take a look at the engagement letter.
Q In looking at the engagement letter, do you have an understanding as to why Cushman & Wakefield was being engaged?
It was an engagement that we were exploring whether -- the Trump Organization was exploring whether or not to donate a conservation easement and restrict certain of its land.
Q That would be over 71 hypothetical residential units, right?
Yes, it would be to prohibit the building of 71 hypothetical residential units.
Q Let's remember the number 71 because that's going to come up later.
MR. SOLOMON: If we can, please, can we mark PX 3197 for identification. It is already in evidence. If can we look at PX 3197, please.
Q Ma'am, do you recognize this document?
I see that it is an e-mail that I was copied on, but I don't have any particular recollection of it.
Q Is it fair to say, though, in or about October of 2013, you were aware that Cushman & Wakefield was ready to move forward with a written report?
I see that's what it says.
Q nd that's Trump Westchester. Is that a reference to

Trump Briarcliff?
Sitting here today, I think so, but there are a variety of Trump properties that were located in Westchester.
Q But sitting here today, you do believe this is a reference to Briarcliff, right?
Hopefully, that's what Mr. Mc rdle told you.
Q That wasn't my question.
Sitting here today, is it your understanding that that is a reference to Briarcliff, Trump Briarcliff?
It is a reference to Trump Westchester. I don't have an understanding one way or the other that it says Trump Westchester. gain, if you have materials, I'm happy to look at things that say "Trump Briarcliff."
Q Maybe we'll get to those. Do you recall if you moved forward with a written report for Trump Briarcliff on or about October of 2013?
What I recall is there was never a -- a donation was never made. The project was explored on and on for a long period of time. I don't recall the fits and starts and timeline of it all.
MR. SOLOMON: If we can, please, mark for identification PX 3201. Sorry. It's been corrected. It's already been moved in evidence.
(Continued on the next page.)

Q PX 3201 is an e-mail chain. Top line is from David Mc rdle to Eric Trump with a cc to you. Do you see that?
Yes.
Q "David per my conversation with Sheri, cc'd, please finish but hold off on sending the appraisal until further notice." Do you see that?
I do.
Q Was Eric Trump involved in the consideration of the potential easement donation for Briarcliff?
He was aware. I'm not sure if I'd say he was involved. I mean, he was involved. I just don't know what level of involvement you have. But yes, he was more than aware of it. He was more than aware and I don't know what you mean by "involved."
Q Were you running all relevant material decisions past him before moving forward?
I would have run decisions by representatives of the Trump Organization, not necessarily always Eric.
Q Did you run decisions past Eric in connection with the Trump Briarcliff potential donation?
You're making me uncomfortable again with privilege.
Q It's a yes or no. Not asking what the decisions were, ma'am, and I'm not asking the substance of the decisions. I'm simply asking if you ran the decisions past him before moving forward.

Some decisions, yes; not all decisions.
Q Do you recall why a decision was made to hold off on sending the appraisal until further notice at that time?
MR. ROBERT: Objection. ttorney/client privilege. Why something was done or not done is clearly in the course of acting as the attorney for the organization.
MR. SOLOMON: My question, Your Honor, was not why. It's do you recall whether the decision was made. If I misspoke, I will rephrase it.
MR. ROBERT: Question was do you recall why a decision was made to hold off.
MR. SOLOMON: What I'm saying is yes or no. I wasn't asking what the reasons were.
MR. ROBERT: But I would respectfully submit when you're talking about an issue here that is clearly one of attorney/client privilege even the question of if you know why a decision was made, even the mere knowledge that the attorney has it is covered by privilege.
THE COURT: Rephrase or read back, either way I don't care, one other the other.
MR. SOLOMON: Your Honor, I can withdraw the question?
THE COURT: Okay.
MR. SOLOMON: We'll fight on other fights.
MR. ROBERT: That I agree with.

MR. SOLOMON: Your Honor, I'm going to ask to put in front of the witness PX 1465, which I understand is already in evidence.
THE COURT: Six-minute warning. Break at 4:30.
Mr. Kise, was that your saved by the bell gesture?
MR. KISE: Ready to be done for today.
Q Ma'am, the court officer has put in front of you PX 1465, which is in evidence. Do you recognize this e-mail chain?
I can read it now and see there is the e-mail chain that I was drafting and receiving. Do I have a specific recognition of it, no.
Q Or recollection of it?
Or recollection of it, no.
Q Okay. If you turn to the second page of the exhibit, the e-mail from you to David Mc rdle?
Yes.
Q Okay. "I spoke to Eric and he is aware that the more supportable value at this point is around $45 million." Do you see that?
I do.
Q Was that the value of the hypothetical easement donation -- withdrawn.
Was that the value of the potential easement donation for the 71 hypothetical units?
I'm not sure if it was of the 71 units because one of

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the things that happens as you're going through this process is you sometime -- you change what may or may not be donated, what may or may not be restricted, whatever the case may be.

What I do see is that there was a value of around 45 million for whatever precisely it was that was being valued. Whether or not -- I don't know if it was 70 units, I don't know if it was determined there were really 75. I can't remember if there were 65. I know there was some confusion around that point, but it was -- the value of a potential donation was around 65 million for IRS purposes under the IRS appraisal standards as compared to other appraisal standards.

Q nd you'll see that Mr. Mc rdle responds to you: "Thanks, Sheri. That is a great summary of where we stand and glad we are aligned here. I will speak with Eric." Do you see that?

Yes.

Q Let me take a step back. I didn't ask you. Your e-mail that started with "I spoke to Eric," is that an accurate summary of your conversation with Eric Trump?

MR. ROBERT: Objection. The document is one sentence. There is a conversation with Eric Trump. That one sentence is what's there. This question is saying is that a -- let me have it right -- "Is that an accurate summary of your conversation?" If you want to talk about that -- whether that one sentence was said since that

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document is now in evidence, that's a fair question, but to talk about the conversation itself, I would say is privileged, Your Honor.

MR. SOLOMON: Is a response necessary? We're talking about valuations in an appraisal.

MR. ROBERT: You're talking about legal advice in a conversation between a tax attorney and her client. This can be nothing more fundamentally --

MR. SOLOMON: Which is disclosed in an e-mail that's been produced.

MR. ROBERT: One sentence was produced that says "I spoke to Eric and he is aware." If you want to say is that statement accurate, that's one thing, but this is not a waiver of the conversation that Ms. Dillon had with Mr. Trump.

THE COURT: How is it not a waiver if it was turned over?

MR. ROBERT: Well, first of all, let me just see. This was produced by -- pursuant to a court order and nonetheless the document itself may be provided, but the underlying substance of the communication is not waived. There is no waiver that's associated with that.

MR. SOLOMON: My question was if this was an accurate summary.

THE COURT: I'll -- as I often do, I'll make the

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simple ruling. Is this an accurate summary? That's a fair question for document that's already in evidence, is that --

MR. SOLOMON: Yes, Your Honor.

THE COURT: Overruled. But again, we may be close, but just is that a fair summary. That's a fair question, of course to someone who says "I spoke to Eric." You mean is that a fair summary of, what, the whole paragraph?

MR. SOLOMON: Of the portion that recite what she said to Eric or you said, ma'am, to Eric. I don't mean to --

MR. KISE: But again, Your Honor, if he's asking the witness if what's in here is accurate does it say that, did you write that communication and is that -- what's in there accurate, that's one thing. But to ask what you --

THE COURT: That's all he asked.

MR. KISE: If that's what he's asking, but he's not asking it quite that way.

MR. SOLOMON: Mr. Kise is trying to parse this in what is not acceptable. I'm asking if what she wrote is an accurate summary of what she told Eric Trump on the phone call. I'm not asking if what she wrote -- this document is accurate as to what she wrote. There is no question the document is authentic. No one is challenging that. I'm asking if this is an accurate summary of what she said to Eric Trump in or about October 2013.

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MR. KISE: nd that then calls for direct attorney/client communication about the matters to which she was engaged to represent him on and represent the organization on, tax matters. That calls for just a direct communication. They have this evidence. They can argue whatever they want from this evidence, but to ask this witness is this specifically what you told your client in a privileged conversation, there is no waiver here of the privilege. This doesn't waive that privilege. It's not possible to waive that privilege just because you wrote in here something to a third party and made a summary.

If what's in there is accurate then they can argue what they want, but the idea that there is a waiver of privilege based on a document -- this document is nonstarter.

THE COURT: Just a side point, it's to David Mc rdle. He is --

MR. ROBERT: So, Your Honor, the point is if the question is did you tell Eric Trump and is he aware and you want to say that first sentence, is it true that you spoke to Eric Trump and did you tell him that the more supportable value at the point is around 45 million, that's a fair question. But to discuss that whether this e-mail is a fair summary of the entire conversation that Ms. Dillon had with Mr. Trump would constitute a waiver of attorney/client

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privilege. So the document that was produced is talking about that one sentence or what is contained in that paragraph. Therefore asking about if that sentence was discussed in the conversation is fair game, but once you go beyond that -- this e-mail wasn't designed to summarize the contents of the conversation between Ms. Dillon and Mr. Trump.

THE COURT: Well, whether it was or wasn't intended, I don't want to take more time on this. You can object. ll I understand the question to mean is asking this witness who wrote that paragraph that starts with "I spoke to Eric" and I think summarize -- a summary of the conversation question is is that an accurate summary of the conversation, is that what you're asking --

MR. SOLOMON: I could not have phrased it better myself, Your Honor.

THE COURT: I direct the witness to answer is that one paragraph, one summary of the conversation? Blame me if you have to.

Let me give this a try.

MR. KISE: Same objection.

Let me give this a try.

MR. SOLOMON: It's a yes-or-no question.

THE COURT: It's a yes-or-no question is that a fair summary of your discussion with Eric?

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To your point about my entire discussion with Eric or partial discussion, it's not a yes-or-no question in my view. If I could just have --

THE COURT: Go ahead, explain.

MR. SOLOMON: Your Honor, other witnesses, including us, you have indicated if it's a yes-or-no question you have to answer yes or no and they're able to explain their answers by questioning on the other side.

MR. ROBERT: First of all, Mr. Solomon, as the judge would say if you can answer it yes or no and the witness said that they couldn't the judge would then allow them to answer.

THE COURT: Yes or no to me to the witness may not appear, so I'll allow an explanation. I hope it's brief.

It will be brief.

So I have no recollection of the conversation itself. I don't know if there is more in the conversation, I don't know if there is less in the conversation. I believe I would have accurately reflected the parts of the conversation that I reflected here I would believe are accurate, but whether there were more things talked about, less things -- well, wouldn't be less things, but I can't tell you that sitting here today. It was a conversation ten years ago.

THE COURT: Okay.

MR. SOLOMON: Your Honor, I've gone over my time.

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THE COURT: We'll bill you for that. Let me -- I order the witness not to talk about in this case or your testimony or anything related to anybody until your testimony is finished, which won't be at least until tomorrow obviously.

THE WITNESS: Thank you, sir.

MR. KISE: We have Ms. Dillon tomorrow and Flores?

MR. MER: Yes.

MR. KISE: Okay. Just want to be sure.

(Whereupon, the trial proceedings are adjourned to Friday, October 27, 2023 at 9:30 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al.

SHERI DILLON
October 27, 2023

NICOLE C. ROBINSON

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COUNTY OF NEW YORK : CIVIL TERM : P RT 37
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PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022
DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
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Supreme Courthouse
60 Centre Street
New York, New York
October 27, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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THE COURT OFFICER: ll rise. Part 37 is now in session. Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.

THE COURT: Okay. So why are we here at 9:30 instead of 10:00? Because we're going to hear oral argument on a motion by Ivanka Trump to quash a subpoena, trial subpoena issued against her.

I read the papers, so, please, don't be too repetitive. I'm hoping that we can finish by 10:00. If we can't, then by 10:30. We want to try to finish with the current witness, Sheri Dillon, today. nd without further ado, who would like to speak on behalf of the motion?

MR. MOSKOWITZ: Good morning, Your Honor. Bennet Moskowitz on behalf of non-party witness Ivanka Trump. First, let me say thank you everyone here, especially Your Honor, Ms. Greenfield and the parties for giving us the time for this in the middle of a very busy trial.

I heard you loud and clear. I have no intention to just rehash what's in my moving papers. s Your Honor knows, I wasn't afforded a reply opportunity, so I'll take this opportunity to address things mostly that the G raised. What I will say just to level set here and I don't

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want to get lost in the shuffle with all the papers flying back and forth on this. We're not here about technical service defects. This is about fundamental issues of jurisdiction.

THE COURT: Good. That makes things a lot simpler.

MR. MOSKOWITZ: Right, and hearing only facts that matter for purposes of the jurisdiction. Ms. Trump does not live in New York. She's not domiciled here and despite the fact that the G concludes otherwise and doesn't present evidence supporting that conclusion, she does not transact business here. Let me say it again, she does not transact business here. That has a very specific meaning under New York law.

Weinstein, Korn & Miller, no offense to Professor Siegal. He's great, too. I picked it up and Section 30809 of Weinstein, Korn & Miller, so that section of Weinstein, Korn & Miller provides, Your Honor, that actual place of business under New York law means where that person is regularly, physically present and regularly transacts business.

Ivanka Trump does not regularly transact business and does not regularly at any of the addresses where they served these subpoenas to these entities at most since 2017 and if they want an affidavit for that business, that's fine. By the way, side note, they didn't put in an

affidavit because I urge the Court, and you read the papers, if you revisit it, maybe you don't need to, the correspondence attached to my affirmation, the G's position on this motion has been like a moving target.

First they said, "Oh, it is a subpoena to these entities." No, it is a subpoena to her. Now I'm hearing in their papers for the first time that she transacts business at Trump Tower. She does not. Since 2017, she's been there once or twice a year, never for business, to say hello, people including family members for 15 minutes, 30 minutes, things like that. So there is no basis to say a service on an entity at Trump Tower is service on her individually. That's just wrong.

Let's look at the case law here and I'll address mostly the case law that was cited by my friends across on the other side. First, they don't deal with the fact that Justice Fried's decision just as an example, melius is decisive. non-party, non-domiciliary is not subject to the subpoena power of the court. That's 64 New York State 3d 855 at 866. gain, that was Justice Fried.

When we had the ongoing discussions leading up to this motion and still today, perhaps the G relied on cases like 2323 Communications Corp. Those cases stand for a principle that's very different which is that where an entity is a party, it can be compelled to appear through a

specific person. The entities they subpoenaed are not parties, so those cases are not applicable.

They also talk about this Gibson Dunn case. Let's take a close look at that case, Your Honor. It is a First Department case, doesn't help them. Maybe they didn't find anything better. In that case, you could tell that -- it's a Gibson Dunn case, is a dispute over legal fees and the person trying to evade service, Your Honor, had the legal fees sent to a specific Madison venue address. In the few months leading up to --

THE COURT: Wait. Wait, you don't mean that the legal fee was sent. How the bills were sent.

MR. MOSKOWITZ: The bill, excuse me, for the legal fees. Invoice me here kind of thing. Then there is a suit over legal fees. The person trying to say service didn't apply, jurisdiction didn't apply had been to that address for work multiple times leading up to the legal proceedings and leading up to the service. nd what the court found there was this guy induced Gibson Dunn to rely on this place where he does go to work sometimes. He can't now turn to the court and say that "I'm actually not really there that much." That's not this case.

Ivanka Trump didn't induce anyone to go to Trump Tower. She hasn't been there working since 2017 and she did not go to work there since then, certainly not in the three

months leading up to this. So if that's the best case they can do, I'm happy with it. It doesn't help them. It helps me.

There are other cases. The Court doesn't have to take my word for it. lot of cases have cited that Gibson Dunn case and what they rely upon such as this Napoli vs. Bern which is 2021 Westlaw 5458747 at page three, 2021 case with the line of cases that I found talking about the Gibson Dunn case. They'll hook on to that inducement. This guy had the legal fees sent there, represented that's where he worked, and then he turned around and said ha-ha, fee over legal dispute, can't get me there.

Now, there is another new argument and, you know, Your Honor, I always tell younger associates there comes a time in trial where parties go a bridge too far and try not to do it. Here is the G's bridge way too far. How they assert for the first time and they are getting a little desperate here, respectfully, that Ms. Trump consented to this jurisdiction in this case because she's a party in the special proceedings.

They must take us all for fools. I'm looking around. This is not the special proceedings. They didn't issue the subpoenas in the special proceedings. There was no trial in the special proceedings, so that's just false on its face. nd in any event, we could cite case law that

stands for the proposition, including First Department case law and this is pretty basic, that even consent in one action does not mean that there's jurisdiction over a person who consents even in a related action. Here is not what we are dealing with. They're saying we had this years-long social proceeding. She was subject to jurisdiction in that proceeding. Therefore, in this trial, under separate index number, which we issued subpoenas, she must come today. Not how it works and there's a reason we didn't hear that argument previously. It doesn't fly.

So let's talk about the entities. gain, I urge Your Honor to revisit the fact that the G kind of spoke from both sides of the mouth about what these subpoenas were. It is pretty simple. We all know what happened here. They had easy jurisdiction over Ivanka Trump. They could have served her at her house. Much different. We probably wouldn't be here today. What appears to happen is they task one someone in their office for saying let's go to the transcript let's look at documents let's find some entities that have something to do with her and let's fire off subpoenas. That's what they did.

THE COURT: Wait. Wait. Entities that had something to do with her? Didn't she own some of them and didn't some of them own parts of others?

MR. MOSKOWITZ: I'll get to that. It is not clear.

The TTT and OPO entity, she absolutely has an affiliation with those entities as do other people who can competently testify for those entities, but let me stop there. gain, as non-parties, you don't get to subpoena those entities and say you must appear via specific person X rather, I'll get to it in a minute, it's black letter law an entity can provide anyone who's competent to testify which goes back to my point.

I asked them why TTT? Why this OPO entity? Why 502 Park? I never got an answer because what they were very honest about, and I appreciate, is that they want her to appear and there's no limitation in their mind of what they could ask her about because it is really not about these entities. That's just the way that they're trying to get jurisdiction over her. 502 Park, I said to them, "Guys, I'm having trouble here. I can't find anything on my end that shows what she has to do with this entity. What did you have before you served the subpoena." I didn't get an answer. You don't get to -- subpoena powers are awesome --

THE COURT: You might get an answer today if there is an answer.

MR. MOSKOWITZ: Yeah, I would like to know the answer because I haven't found it. I said, "Please, share it because if there is something "-- I'll note I spent a lot of time. I don't even know that that entity was used

for anything. It exists, I grant you that. I could speculate at what it might have been. I have no document that says that like the other two that she was an officer or anything like that. She doesn't know what it is and the G doesn't know what it is.

So they weren't served on Ivanka Trump. They were served at best on these entities. nd, by the way, not all cleanly, but again, I'm not here about service stands or what. If they insist they need those entities, those entities can appear. I think they should articulate with why they need those entities, but I understand the defendants will speak for themselves. They offered -- for the two that we concern that they offer, they offered for someone who has lived here appear and testify for those entities, which you are allowed to do.

New York law again, I pulled out Weinstein, Korn & Miller. You can look at Section 230504, "If a subpoena to testify is served on and is addressed to an entity, that entity may choose the person who will be deposed," period. So they cite --

THE COURT: I'm very familiar with that concept that the entity has the right in the first instance to decide who to produce. I think we are in a different situation than the normal one here. s we all recognize, we are not looking for the entities. They're looking for the

person.

MR. MOSKOWITZ: That's exactly right. t the end of the day, Your Honor, they just don't have jurisdiction over her. They tried with this transient business again articulated to me for the first time in their papers that they submitted to Your Honor and I just addressed it. It's just wrong and if they want an affidavit saying what I just represented to the Court as an officer and I'll say it again that she does not transact business at any of those places they served, I will be happy to do it.

THE COURT: Did she ever transact business?

MR. MOSKOWITZ: Yes.

THE COURT: When was the last time she transacted business?

MR. MOSKOWITZ: Before 2017.

THE COURT: Okay. So what?

MR. MOSKOWITZ: You have to have jurisdiction over her now. If someone worked in New York 50 years ago and leaves, you don't get to say, "Hey, you once worked at this address. Come to trial." That's not how it works. It has to be jurisdiction now, transact business here now.

THE COURT: How are we going to define now? What if somebody transacts business here, leaves on a vacation or a business trip or is away?

MR. MOSKOWITZ: gain --

THE COURT: week later, they're not still --

MR. MOSKOWITZ: No. The Weinstein, Korn & Miller basic principle addresses that, Your Honor. If it is a place you regularly return to work such as like I work on Third venue where my law firm offices are. If I leave for a week and they serve me there, I can't turn around and say, "Oh, I was gone that week." Here, you have someone who didn't work at the place for many, many years. They no longer return there for work.

THE COURT: Let me ask you a question. Did Ivanka submit any sworn statement?

MR. MOSKOWITZ: On this motion, no, because again, I didn't hear this argument and didn't get a reply for it. I'm happy to submit one now. I would have done it in a reply brief.

THE COURT: Now is too late. I'm hoping to decide this today and if she testifies, it will be fairly soon.

MR. MOSKOWITZ: I wasn't put on notice that that was their argument because they kept changing it. How could I respond to something they didn't articulate? I can't guess what their position is.

THE COURT: Well, it's standard practice in New York law that you need to have an affidavit from someone with personal knowledge if you're going to start spouting facts, but --

MR. MOSKOWITZ: I agree, and they don't have one either showing the opposite, but I'm happy to put one in today.

THE COURT: I'm not sure that they can prove a negative. Ivanka would be the person best able to say when she ever -- when was the last time she worked in New York or whether she still works in New York, what she owns here, et cetera, et cetera, but --

MR. MOSKOWITZ: I could get it to the Court S P.

THE COURT: I promise you I'm not a "Ha-ha, I got you" judge. I'm not trying to say, "Ha-ha, you didn't have an affidavit from her," but it does weaken your argument because you keep talking about what she does and doesn't do. She would know better than you.

MR. MOSKOWITZ: I agree, and if I had been afforded an opportunity to reply, I would have submitted it. I did not want to disregard what the Court advised me which was no reply afforded, which was the e-mail I received.

THE COURT: Whether you should have needed a reply, waited for a reply, a reply is to respond to their arguments, but if you don't make out a prima facie case by an affidavit from Ivanka saying "I don't do these things. I don't live there," et cetera, I don't think that should have been in the reply. That should have been in moving papers, but that's just my opinion. ll right, continue.

MR. MOSKOWITZ: Thank you, Your Honor. So going back to the idea that corporations can designate their own witnesses, they cite the Standard Fruit case, totally different. In that case -- by the way, it was from 1977 -- the court did allow a party to subpoena an out-of-state witness. It was after the witness provided by the subpoenaed corporation was unable to testify to the relevant facts. nd even then, the court allowed the corporate entity to select between two different individuals.

THE COURT: When I said, I read all the papers, I didn't read all the cases, but that case, I did read.

MR. MOSKOWITZ: Right. Right. So again, that's our point. The corporation gets to put someone up and it has to be someone who can speak to the facts, again, which is why my first question to them when we got notice that they were trying to serve these subpoenas, "Hey, what testimony are you going for" and we quoted this and it is in the exhibits to my affirmation. They were honest about it. I appreciate that. It was basically limited. It was, "She knows this, she knows that, but I can't really limit it," so they want her here. They want it to be unlimited. They didn't depose her. They could have. They didn't de benne esse, you know, subpoena her. They could have done that. I guess they didn't think she'd be out of the case. I'm

sorry. She is and that changes things fundamentally. You're no longer in the case. You're not a resident. You don't work here. You don't have jurisdiction over that person. That's the breaks.

THE COURT: The expression is "that is the breaks."

MR. MOSKOWITZ: I'm referring in the singular situation, but I appreciate Your Honor's.

THE COURT: ll right. nything else on your initial -- I don't know whether we will have time for a reply, but was that it for now?

MR. MOSKOWITZ: Yes, Your Honor. I mean, I appreciate the possibility if I hear something new, to address it.

THE COURT: Probably. Probably.

MR. MOSKOWITZ: Yeah.

THE COURT: Okay. It is my understanding that the defendants themselves do not have standing to contest this, but I'll let them talk if they want to.

MR. KISE: Thank you, Your Honor. I don't know that I would say we don't have standing since it affects the impact of the trial and it affects the course of the trial, but in all events, I appreciate the opportunity to address.

THE COURT: We always like to hear your mellifluous voice.

MR. KISE: That's good. t least there's something

positive that may happen here. I will try not to go over as you suggested, Your Honor. I'm not going to belabor the papers. I know you've read them and you've seen in our papers that we view the subpoena truly as just continued harassment of President Trump's children. They were all named and included in this case as leverage. There's no serious evidence that any of them had any involvement in the Statement of Financial Condition preparation.

Ms. Trump was dismissed from the lawsuit by the First Department and now despite having a year to depose Ms. Trump in this case, several months post-dismissal to depose her, now all of a sudden in the trial, the ttorney General claims that her testimony is somehow essential. I thought Mr. Wallace was going to object when he stood up. I'm just so used to it. No. No.

THE COURT: Obviously, testimony does not have to be "essential."

MR. KISE: Even if it were relevant then, then they should have done it during discovery. They're claiming now that only she can provide this information and if it was so essential, then why are we here in the middle of trial? There was no even attempt to do a de benne esse deposition which was done with other witnesses who may or may not be available for trial.

The exhibits attached to their motion demonstrate

that this is an inexcusable delay. ll of the documents that I saw that were attached as exhibits were all things they had in their possession for at least a year, if not more. The ttorney General certified in their NOI, their note of issue, that all discovery was complete and the service of that prohibits reopening. I'll cite the Court to the Melcher case, 38 D3d 376. It is a First Department case that stands for that proposition that their certification meant that they've completed their investigative efforts for trial, their discovery efforts for trial and yet, this is tantamount to a discovery subpoena. Nothing was done.

To us, again, our answer is obvious they want to put Ms. Trump on the stand, create another media event while I'm always certainly happy to have the ttorney General in the courtroom, her presence today demonstrates that that's what this is about. I doubt she came here to hear Ms. Dillon. I doubt she came here to hear Mr. Flores. lthough, I'm sure the testimony will be riveting. Really the purpose here is to focus on another one of Mr. Trump's children who has been dismissed from the lawsuit.

To the jurisdictional point that Mr. Moskowitz raised, there's just no legal authority for the Court to require a non-party, non-domiciliary to appear at trial as a representative of a non-party entity. It's non, non, non.

nd the Court itself could not compel her attendance under these circumstances.

The service issue, I'll just touch on briefly. The service on -- and the cases -- I'm not citing all the papers. They're in their papers, Your Honor. The service on a non-party entity registered agent is not service. It is not service on Ms. Trump in her individual capacity and a non-party, non-domiciliary not subject to the court's subpoena power does not constitute service on Ms. Trump. nd I'll cite, as in our papers, the Genger case, 50 Misc.2d 361. The ttorney General argues that Ms. Trump did not contest jurisdiction in the special proceeding, but that's frankly a complete non sequitur. The Coutts case they cite is completely in opposite. That's a judgment debtor who fled the jurisdiction after judgment that then filed a parallel action against the creditor in a New York court.

There was no dispute that the court could obtain the jurisdiction over the debtor in the very case at issue, but here, you have Ms. Trump is not a party. She was dismissed by the First Department. She's not a judgment debtor and she's not actively litigating any affirmative case in New York.

The Standard Fruit case that they cite is also in opposite. There, an investigative subpoena sought

information about that entity, about Standard Fruit, about that specific entity. They produced, as was their right, the first witness, the corporate designee to testify about relevant facts. Only after that witness testified and there was a demonstration that that witness could not -- could not testify did the court order another witness.

The melius case, which we also cite 64 NY Supp. 3d 855, draws the distinction further bearing out, Standard Fruit draws the distinction between a non-party corporation and a corporation under investigation. Here, you have three non-parties, none of which are under investigation, none of which have any association heretofore with this case.

So, the subpoenas were not served. They were served all on Ms. Trump. They were served on the non-party entities. Those non-party entities are entitled to designate a corporate representative and the ttorney General has the burden in the first instance to demonstrate that that designation was inadequate. The Barone case, 260 D2d 417 and the other cases we cite stands for that proposition that there must be some demonstration that the initial witness that is designated by the entity is inadequate.

There's no showing that the individual that's been designated here by the corporate entities, Eric Trump is inadequate. In fact, the ttorney General herself alleged

in the complaint that Eric Trump is responsible for all aspects of management. I mean, that's their allegation. So I don't see how they can claim without any explanation that -- or any proof that Eric Trump is now somehow an inadequate corporate designee, and they're not entitled to raise that issue unless and until they make that -- make that showing and that has been established by the court.

Finally, and just briefly, the subpoena itself revealing what this is all about is truly overly broad. There is no attempt to narrow the issues. They just want another free-for-all on one of President Trump's children. There's no real relevance to the proceeding. It's more in the nature of a subpoena for a deposition where we're going to spend seven hours. "What do you know about this?" "What do you know about that"?

THE COURT: She was deposed already in a different case related, if you pardon the expression, so it is not like they're not -- it is not like a total shot in the dark.

MR. KISE: It may not be a total shot in the dark, but the subpoena is pretty close. The lights are on dimly and they're shooting off to the right when there's someone over on the left that's their target. So yeah, maybe it is in the same room, but the lights are dim and they're going in the wrong direction. So there's -- if they had a

specific focus, then they would have put that in the subpoena. If they had a specific purpose, they would have put that in the subpoena.

nd frankly, had they had such specific focus and specific purpose, we wouldn't be here because they would have either deposed Ms. Trump during the long course of discovery in this case. They had ample opportunity to depose anyone they wanted. She was certainly available for that while she was a party. nd then after she wasn't a party as of June of this year, they still had several months to conduct a de benne esse deposition.

They haven't even deposed -- made any showing to the Court as to why that wouldn't suffice or wouldn't have sufficed. Even after the commencement of trial, they haven't even proposed that. nd I'm not going to agree to that on behalf of Mr. Moskowitz' client. I'm just showing that it just shows the real purpose here is to drag her into court. It is bad faith and it is harassment of another one of President Trump's children who has been dismissed out of this case.

The First Department determined that she left in 2017, so to your point, Your Honor, about affidavit or connectivity, I mean, I think the First Department has certainly, if not established it fully, has established it almost 95 to 99 percent of the way. They basically said she

doesn't have anything to do with this case and she should be out. She left years ago. This is not as Your Honor posited, respectfully, a situation where she's gone on some vacation or some business tip. She's been gone for years, multiple years, years and so for those reasons and the reasons stated in our papers and those of Ms. Trump's counsel, we would ask the Court to quash the subpoena. Thank you.

THE COURT: Mr. Robert.

MR. ROBERT: s usual, I will be extremely brief. The goosey gander rule, Your Honor refers to it, what's sauce for the goose is sauce for the gander. Yesterday morning when Mr. Holl was on the stand and I had colloquy with the ttorney General's office because we didn't think he was going to be called and I said, " re you going to call him back?" nd they said, "Well, no. Try to serve a subpoena on him." Turns out he is an out-of-state resident. We did effectuate service on him outside once he left the court yesterday, but the rules are the rules.

The motion that's before Your Honor today is a motion to quash the subpoena on three entities. I agree with Your Honor's sentiment that what this is really about is trying to serve a subpoena on Ivanka Trump individually. Then that's what they should have done. There were plenty of opportunities to do it. They could have deposed her in

this case. She was dismissed in the case the end of June. There was still time to do the de benne esse deposition and they did not and instead of coming before this Court forthright and saying, "Listen, we want Ivanka Trump and these are the reasons why," they come up with this Ruth Goldberg, coming up with these three companies that have nothing to do with it. We want them.

Mr. Moskowitz in consultation with my client says, you know what, for the two companies that have something to do with Trump, Eric Trump is willing to be the corporate representative because he's going to be testifying anyway and they said, "Well, no, no, not so fast." They were smoked out as Your Honor pointed out. They want Ivanka Trump. If they want Ivanka Trump, there is a mechanism to do it. If they do it in the appropriate way and even if there is still an objection by Mr. Moskowitz, that becomes a motion that's before Your Honor. But right now, all there are are three subpoenas, three subpoenas in our view in our papers are defective. There should be no question that they be quashed and we move on. Thank you, Your Honor.

(Continued on the next page.)

THE COURT: Does the ttorney General have anything to say?

MR. W LL CE: I will try to be brief, Your Honor.

THE COURT: You don't have to be. They took their time.

MR. W LL CE: I want to try to be, though.

So I'll start with the point the defendants made about whether there is a mystery as to what Ms. Trump might testify to, why it might be that Eric Trump is not a suitable replacement for Ms. Trump and the answer as you somewhat indicated is they have a very good idea of exactly what we would like to ask Ivanka Trump. I don't think we were hiding it. Her name is on the subpoena. We've been going back and forth about whether Ivanka Trump, the person, would be appearing.

We have her examination during the investigation. We've even offered as -- as a resolution that we would put being sued into evidence, her examination from investigation. We even gave the defendants the designations of what we would have introduced from her examination and the defendants, as is their right, declined to waive the fact that they were not present to cross examine her during that exam and hence, it's not admissible. But they very much know exactly what we would like to put into evidence from Ms. Trump.

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I'll also go back to the idea that she is no longer a party and somehow the statute of limitations may play into whether or not she has relevant evidence to provide the Court and courts at trial.

I will note that the statute of limitations stretches back to 2014. That means that Ms. Trump was an executive of the Trump Organization in 2014, 2015 and 2016 before departing the company in 2017. ll of that is relevant to the case and within the statute of limitations period. She was an executive of defendant entities and she undertook transactions on their behalf.

Whether or not the First Department thought that we had established she committed fraud during the period that she was subject to the statute of limitations is unrelated to whether or not she has relevant knowledge of what was happening within the company at that time. nd part of the reason we need her knowledge and not Eric Trump's is because she was the direct contact with Deutsche Bank on the OPO loan. She ran that project, not Eric Trump. nd I believe the case law in our brief establishes that we're not required to take a witness who may educate themselves about the company's position and then testify.

I will also add the idea that we should have taken her deposition is -- it is a red herring. She has a presence in this state. She owns multiple businesses within

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the state. She owns multiple businesses that have their principal place of business within the state.

nd I'll note that Mr. Bennet -- Mr. Moskowitz keeps talking about I believe he's a Weinstein & Miller fan.

THE COURT: Weinstein Koren & Miller is with a "K" and not a "C."

MR. W LL CE: I'm aware of that at least. But he also ignores the plain language of the CPLR 3086 which states: "For purposes of this section, actual place of business shall include any location that the defendant through regular solicitation or advertisement has held out as its place of business." Ivanka Trump has certainly held out the location of Trump Tower and the Trump Organization as a place of business for the OPO Ivanka entity, for TTT and for the 502 entity.

I will add that if Mr. Moskowitz needs additional information on relationship to the 502 entity that can be found in the -- paragraphs 24 through 26 of the supporting affidavit that we submitted and the documents attached thereto. It is a property that she owns and is renting out as a commercial enterprise for TTT.

I would note that this is part of the case already. Ms. Kidder talked about it during week two of the trial. It is part of the licensing fees that the company earns.

I would also note that she returned as a manager.

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nd this is identified in paragraph 17 and 18 of our supporting affidavit. "She returned as a manager to that entity after her time in Washington was over."

So she is a manager of the Trump Organization business. I think you combine that with the fact that they're offering Eric Trump as a replacement suggests that she is very much still intertwined with the Trump Organization.

So we're not just focused on the specifics of the mechanics of service. I certainly think that under the operative words of this Court she could be brought here by the Trump Organization. They certainly seem to have enough control of her.

The only other point that I think I would make is she clearly owns and operates businesses. They're still affiliated with defendants, they're still relevant to this case and are located in New York. If she truly wanted to completely absent herself from the company, from the state, she was free to do that. She has maintained these businesses and these businesses aren't complete strangers to this action. Ivanka OPO is the ownership interest she held.

s late as after the sale of this property she obtained I believe at least $4 million from her interests in the sale of the OPO property which explains very much directly at issue in this case. She was acting in her own interest when

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she was negotiating a loan with Deutsche Bank on OPO.

So, in any event, she very much remains intertwined with the Trump Organization. She very much still has a presence in New York and we are now obligated to go seek her de bene esse deposition because she is still available to this Court and through that commercial presence. She is a hundred percent someone who can come in and testify and is susceptible to subpoena in this jurisdiction.

So I don't think she is currently unavailable. She is a hundred percent available and the subpoenas were properly served on business addresses she maintains. Either businesses can require her to come forward and testify or she is holding out herself as doing business in those locations in the services appropriate. The fact that they're multiple avenues to secure her testimony in this court does not mean that we're doing something untoward or hidden or changing our tune. She is still apart of the Trump Organization. She still has commercial interests here in New York. She operates businesses here. Whether or not she visits them once a year just to say hello to the good people who are handling her paperwork or she comes more regularly is really irrelevant under 308 subsection six. But I'm happy to answer any questions Your Honor might have, but we really don't see this as being a closed issue. She has sufficient contact with New York if the subpoenas were

appropriate.

THE COURT: What are your thoughts about granting the motion only in part and limiting her testimony to the OPO, Old Post Office transaction?

MR. W LL CE: I don't think -- I'm not sure what the basis would be for that. She would have the knowledge in her head of what the transactions are. I think it would also cover her information on the licensing agreements of TTT, her knowledge of the 502 Park apartment. But honestly, if it's just the OPO, I do think relevant -- the course of conduct with Deutsche Bank is relevant to the OPO loan. I'm not sure it presents that much of a restriction to the scope of her testimony, but I think it -- the entities we've subpoenaed really do cover most of the breadth of what we would be interested in hearing -- what we would be interested in having her testify about.

THE COURT: Brief replies?

MR. MOSKOWITZ: Thank you, Your Honor.

First, as to the only argument I heard that touches on actual jurisdiction, the issue which is what dictates the result today is whether there is jurisdiction over my client. I heard this argument with this other CPLR section. There is no case that says that being affiliated with an entity registered to do business in New York means that service of a subpoena on that entity means you have

jurisdiction over that individual. That is just wrong. We do cite cases in our brief that go to that point.

Even when it's a party entity the cases make clear it's not the same thing. What I guess I'm hearing now, again, a new argument going back to, you know, why I didn't put in certain affidavits I was replying to. I'm now hearing basically a general jurisdiction argument. There is no evidentiary record of asserting general jurisdiction over Ms. Trump and now that we're here today and I'm hearing it for the first time I go as far as to say that argument's been waived.

I also heard beyond the jurisdictional argument that was the briefest part of Mr. Wallace's presentation. I heard a lot of, "I want this, we want her for that." I want lots of things. My kid wants a unicorn. What I didn't hear is why there is jurisdiction over her such that you can get those things. There isn't. lot of these things are not in the record. lot of it was just their say so conclusion. She holds herself out as doing business in New York? No, she doesn't. Where is that in the record? gain, all they have submitted and all that there is in life is that she is affiliated with certain entities that are registered to do business in New York.

THE COURT: Well, again, "affiliated?" That's kind of a loosey-goosey term.

MR. MOSKOWITZ: Say owner. I can go with that. Someone who lives in Nebraska can own shares in 50 New York corporations. The case law is clear, Weinstein Koren & Miller with a "K" is clear, Siegel is clear that service of a subpoena of process of a complaint, whatever it is on those entities is not service on that person and does not mean that you necessarily have jurisdiction over that person absent something like someone who is also subject to general jurisdiction which is not what we're here talking about today. Thank you, Your Honor.

MR. KISE: Just briefly, Your Honor. I think Mr. Wallace's points about we have a very good idea what we want out of Ms. Trump's testimony, we knew about the OPO loan involvement, all the facts that he's reciting they've known about since the investigation. Forget about since the case started. Since the investigation.

So the question comes up again why not do this during discovery. Why not depose her during discovery? Why not depose her after she was dismissed from the case? They had plenty of time to do that. Why issue a Note of Issue if they had a witness that they still needed an essential witness. The rules exist --

THE COURT: You file a Note of Issue. You don't issue a Note of Issue.

MR. KISE: That actually sounds better.

THE COURT: I'm just trying to get you up to speed on New York law.

MR. KISE: By the time we're done here in November of 2025, I probably will be. The rules exist for a reason, Your Honor, they do. nd the case I cited it's just black letter law. Once the ttorney General files a Note of Issue, that's it. They don't get to reopen discovery. Particularly -- it would be one thing if this were some new witness that no one knew about before that. Well, this is something critical to our case and we didn't know about these facts and there is some justification. This is an individual that's been associated with the investigative process and then this case then dismissed and no attempt to do anything despite the fact that as Mr. Wallace said we have a very good idea we've known about these specifics, we've known about her specific involvement in the OPO transaction, etc.. So they haven't provided the Court with any explanation for that. The designations that Mr. Wallace represent, I'm glad that he acknowledged and I appreciate him acknowledging. Of course, we weren't there which is our biggest problems with using the examinations under oath, but the designations offer little because there were designations essentially with most of the transcript. So it wasn't really a narrowing in that sense.

The idea that somehow Ms. Trump is under the

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control of the Trump Organization or any of the defendants, her father, all I can say is anyone that's raised a daughter past the age of 13 knows they are not under your control. She lives in Florida, she has her own family. The jurisdiction must be here and now irrespective of what she did five years ago, ten years ago with the OPO transaction, the jurisdiction must be here and it must be now and it simply doesn't exist.

nd respectfully, the Court doesn't have the authority to just ignore that impediment. Respectfully, it doesn't have the authority to ignore the Note of Issue. Respectfully, the Court doesn't have the authority to just say well, I don't care if they knew about all this a long time ago, we're going to let this happen in the middle of trial. I think the case law on that is very well established.

So -- and, again, they haven't even proffered -- I'm not offering this on behalf of Mr. Moskowitz and his client. They haven't proffered the least intrusive means which would be some deposition taking place where she does live, in Florida. nd if it's so narrow and it's so focused her testimony, then perhaps that can accommodate the issues. gain, I'm not volunteering that, but what I'm saying is the ttorney General's offered nothing to this Court but no, she must come in here now. We didn't depose her, we don't have

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jurisdiction over her, we're sending subpoenas to these nonparty entities, but she must show up now. Only one reason: They want her in the courtroom so that it will be filled again with media and we can have another circus day. So for those reasons and the ones stated, the subpoena should be quashed, Your Honor.

THE COURT: Okay. Give me a moment.

(Whereupon, there is a pause in the proceedings.)

THE COURT: Let me turn on the microphone first. Defendants, I'm not saying that this is sufficient. In fact, it's not sufficient, but what properties does she currently own in New York or what economic interests does she currently have in New York? If you don't know, you don't know. That's okay.

MR. MOSKOWITZ: I don't know, Your Honor.

THE COURT: Okay.

MR. MOSKOWITZ: nd I'll point out that if it were clearly in the submissions, which it's not, I would have addressed it and I don't --

MR. KISE: I don't know either, Your Honor. I just know there is nothing in the record that shows that she does other than ownership and entities that are nonparties. gain, as Mr. Moskowitz --

THE COURT: I didn't ask whether they were parties or not. I asked whether she has ownership interest in New

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York now.

MR. KISE: gain, I don't know other than what's in the record and that would -- any ownership of any nonparty entity or party entity would not necessarily give the Court jurisdiction.

THE COURT: I acknowledge that.

MR. KISE: Because JP Morgan is headquartered here and I think it's somewhere in my 401(k) -- I have ownership interest in a New York entity.

THE COURT: You have to be careful what you do up here.

MR. KISE: Yes, right.

THE COURT: Defendants, what, if anything, in the record shows current ownership interest by Ivanka in New York?

MR. W LL CE: I believe that's almost everything that's laid out in our affirmation in support. She owns the OPO entity, which has its principal place of business at Trump Tower; she owns the 502 entity; she owns an interest in TTT Consulting. We -- she is also one of the managers. She owns two apartments at the Trump Park venue property. I believe that's primarily the scope of what we laid out in our affirmation.

THE COURT: nd was the affirmation -- were the affirmations by someone with personal knowledge?

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MR. W LL CE: It was made by someone with personal knowledge of our files and it attaches the documents that are the support, so it shows the agreements relevant to the OPO entity, to the TTT entity and to 502. So it lays out documentary evidence that supports our assertions on those fronts.

THE COURT: ny last words by defendants? nd then I'll retreat for properly ten or 12 minutes and come back with a decision.

MR. MOSKOWITZ: Thank you, Your Honor. I can answer Your Honor's question. No, it was not someone with personal knowledge. It was a member of counsel for the ttorney General who attached stale documents. None of them show, answer the question that I can't answer either, which is what does she currently own.

By the way, that's all stuff that usually gets addressed at a Traverse hearing, which again, they didn't ask for. We're not submitting to, but that's all about general jurisdiction which they never even argued until now.

THE COURT: I once read all the way through "Prince, Richardson & Farrow On Evidence." One of the things I really appreciated learning is there is a presumption in the law that facts stay the same, that they don't change unless there is some reason to think they change. So I don't think the -- well, we don't know what

she owns today. Because she owns something six months ago, I don't think that --

MR. MOSKOWITZ: I was just going to say someone can show you a piece of paper that says I go to NYU. Unfortunately, for me, those days are long gone and my point is that as to the question of what gives jurisdiction over her now, there is nothing in this affidavit from someone who in any event doesn't have personal knowledge of that question.

THE COURT: You said you went to NYU?

MR. MOSKOWITZ: Yes, Your Honor.

THE COURT: Which division, which school?

MR. MOSKOWITZ: College of rts and Science.

THE COURT: Okay. The law school, '79.

MR. MOSKOWITZ: I'm aware of because my colleague went to school with you.

THE COURT: nyway, interesting.

MR. MOSKOWITZ: Your Honor, I could submit an affidavit, though, again, if the Court has questions I would like to point out, though, they flip the burden.

My life as a litigator would be very easy if I could fire off subpoenas without the basis to do so which last I checked I have to have the basis when I serve a subpoena and then say to the person tell me why it shouldn't be this subpoena which is what they're doing here, but

again, I could submit an affidavit and do it very quickly.

THE COURT: ll right. Let's take a break until 10:35. I suspect to come back with a decision.

(Whereupon, there is a recess in the proceedings.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.

THE COURT: Let me start with two basic ancient principals for which no citation is necessary.

trial is a search for the truth and the law is entitled to every person's evidence. On the other hand, we don't compel people to testify unless the Court has personal jurisdiction over them. s we learned in law school in the international shoe case, personal jurisdiction to satisfy due process has two elements: Notice and power.

Here, the power of the Court to compel Ms. Trump into court to testify. In this case, notice is clear which is why we are here and in any event I think was essentially conceded by her attorney.

I find that the power element is also clearly satisfied here. "The due process element is satisfied where the non-domiciliary has minimum contacts with New York State and based upon those contacts the non-domiciliary could or should have reasonably anticipated being hailed into court," and that's more or less an exact quote or paraphrase from LaMarca, 95 NY2d 216.

lso, and this phrase is engrained in all lawyers, "Ms. Trump has clearly availed herself of the privilege of doing business in New York."

Finally, plaintiff's papers make abundantly clear by documentary evidence that Ms. Trump owns property in New York and has done business in New York. Even Ms. Trump's own papers admit that she is occasionally here.

With all due respect to Mr. Moskowitz, the record is devoid of any evidence because we do not have a sworn statement from Ms. Trump that she does not do currently or has not recently done business here. The time to submit any such affidavit in the first place was in the moving papers. Movant made the argument. There is no jurisdiction over her and it was her burden to provide an affidavit of someone with personal knowledge, meaning herself, to substantiate that. It is black letter law that you may not use a reply to state facts that should have been in your moving papers. Basically we don't know what she does or doesn't do because only she could tell us that and it's too late to tell us that now. That was -- that should have been, could only have been in the moving papers. That's what you do in the motion to quash a subpoena and I've seen that all the time.

I get affidavits from people in California or Nebraska saying I don't own property here, I don't come here, I don't do business here. We don't have that.

So the motion is denied, but her testimony shall not be scheduled before Wednesday, November 1st for Ms. Trump to appeal this decision if she deems herself so advised.

Now, let's go on to the trial. First witness, next witness or same witness?

Sure, Mr. Moskowitz, you want to say something first?

MR. MOSKOWITZ: I just want to request a so ordering of the transcript unless the written decision is forthcoming.

THE COURT: Unlike what I sometimes do there won't be a follow-up written decision. The decision will be a so order of the transcript and I'll make sure it gets so ordered today.

MR. MOSKOWITZ: Thank you, Your Honor.

MR. KISE: Not to volunteer, would the Court entertain -- I mean, we just did one on Monday, a de bene esse deposition? We just did one on Monday. That way Ms. Trump doesn't have to leave her family and three children to come to New York.

THE COURT: No. Denied. I want to see her in person. That's how we prefer testimony.

I'll get the signed transcript from which you can appeal by Monday morning. It's just tough, but you know

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what it will say.
MR. W LL CE: Your Honor, before the witness begins her testimony, we did have one housekeeping matter concerning today. I believe Mr. Solomon has maybe an hour and a half -- at least an hour and a half of questioning. I believe the defendants are going to cross and the question is should we bring the next witness, Mr. Flores, back to the courthouse or do defendants expect this will take us through the remainder of today?
MR. KISE: I don't know if we're going to cross this witness at this time. We may call her in our case, but to preserve time we're not going to take up the Court's time today necessarily. We reserve the right as we have with other witnesses, but I'm not sure that's going to become necessary. So I don't want to unnecessarily delay the proceedings.
THE COURT: So that will save time for today.
Will there be enough time to finish the current witness and have Flores testify?
MR. KISE: If we go like yesterday --
MR. SOLOMON: Your Honor, my questions -- I should be able to finish. With respect to objections and how long they take, I can't speak to that. I will do everything in my power to finish this witness today, if at all possible, yes.

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THE COURT: The question is will we be able to get to Mr. Flores today at all? Let's make it easy on everybody.
MR. KISE: I think it would be optimistic.
THE COURT: ll right, so we'll have Flores testify starting next week, okay.
MR. W LL CE: Understood, Your Honor.
MS. F HERTY: Thank you, Your Honor.
THE COURT: I like to make life easy on everybody.
I'll remind the witness as I always do that she is still under oath.
nd let's get right into it, Mr. Solomon.
MR. SOLOMON: Thank you, Your Honor.
CONTINUED DIRECT EX MIN TION
BY MR. SOLOMON:
Q Ma'am, I'd like to ask the court officer for PX 158 in front of you. This document is already in evidence.
If turn to page six of 13 you'll see that it's addressed to you from Cushman & Wakefield, David Mc rdle's letterhead. Do you see that?
Yes.
Q Okay. nd if you turn to page 11 of 13, is that your signature?
Yes.
Q nd did you sign it on or about February 19, 2014?

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Yes.
Q Okay. Please turn back to page six.
I'd like to focus your attention on the "Subject of the ssignment and Relevant Characteristics."
THE COURT: Let me just suggest to the witness she has -- you have three different ways to see this: the paper copy, the screen in front of you and the screen there. I often find the screens are a lot simpler. You don't have to turn pages, they turn the pages for you, but whatever you want to do is okay. Some people like physical papers in their hands.
THE WITNESS: Thank you.
Q Ma'am, if you look at this paragraph, did you understand you or your firm were retaining Cushman & Wakefield to "perform an appraisal on the hypothetical 71-unit development site located at Briarcliff Manor?"
Yes, I did.
Q Okay. nd was that appraisal to be done in connection with a potential donation of a conservation easement?
Yes, it was.
Q Thank you.
nd to be clear, the purpose of this was to document the value of the conservation easement. In connection with that as apart of that assignment it was to appraise the hypothetical 71-unit the residential development.

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Q The development didn't exist at the time of the appraisal; correct?
No, no, no. It was a hypothetical.
Q When you say "no" let's clarify this.
Did the 71-unit development exist at the time of the appraisal?
There was no building.
Q nd, in fact --
Or two buildings.
Q nd, in fact, to your knowledge, it's never been built; right?
To my knowledge, it's never been built.
Q Okay.
MR. SOLOMON: Can I please have 3194? May I ask the court officer to put 3194 in front of the witness which was already in evidence.
I'm sorry, could I clarify one more thing?
THE COURT: Yes.
I guess it wasn't -- while there was a general scope of -- I think you need to look more at the general scope of work to understand the work that was being done. nd, again, this was all about documenting the value of a conservation easement and not just the 71-unit hypothetical buildings, you know, units needed to be appraised, but it was also the golf course and other properties. So it was a little bit shorthand or

abbreviation just to say is that the 71-unit. That was part of the whole project.
Q I appreciate that.
That's why I wanted to take a look at the letter because that didn't sound right to me, but I wanted to get that right.
Q Sure. I appreciate that.
The appraisal needs to determine whether the surrounding parcels or contiguous parcels that may be owned by the same party are enhanced in some way by the conservation easement. I think you mentioned that yesterday; right?
That's apart of it, but again, the whole point is to get to the differentials. What is the value of the conservation easement, the rights and restrictions, the economic value of those things that were being given away.
Q But in that process one of the steps is valuing the hypothetical 71-unit residential development; right?
That is apart of the assignment but it's not the entire assignment. There was more to the assignment than that.
Q If you take a look at PX 3194. The cover is an e-mail to you from Mr. Mc rdle dated pril 25, 2014. Do you see that?
I don't have that yet, but --
MR. SOLOMON: PX 3194.
Yes. It is an e-mail to me from Mr. Mc rdle.
Q nd did you receive it in or about pril of -- pril --

on or about pril 25, 2014?
I have no recollection of that, but I assume that I did since it's an e-mail addressed to me and I have no reason to believe I did not.
MR. SOLOMON: We offer it in evidence.
THE COURT: Granted. It's in evidence.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. Understood.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3194 in evidence.)
Q If you turn to page six of 193, please, under "General Description." Do you see that?
MR. ROBERT: Excuse me, I haven't been provided with a hard copy. Is it just the e-mail or is there an attachment seeking to move it into evidence?
MR. SOLOMON: It's already in.
MR. ROBERT: I thought you moved it into evidence. That's why you asked to move it. You said "we offer it into evidence."
MR. SOLOMON: I'm sorry. It was already in evidence.
MR. ROBERT: Got it. Thank you.
Q If you could turn to page six of 193. I'd like to focus you on the general description, second sentence:

"The development site is entitled to allow the construction of 71 luxury housing units contained within two adjacent low rise structure." Do you see that?
Yes, I do.
Transcript continues on the following page....

Q So in connection with this project, did the appraisers determine in trying to calculate the value of the conservation easement the value of the right to build 71 luxury housing units?
My understanding, that was part of the assignment, yes.
Q Please turn to page 4 of 193. The chart in the middle of the page, "Final Value Reconciliation." nd do you see, "Final Value Conclusion of Conservation Easement $43,300,000?" Do you see that?
I see that.
Q Did you share this information, the value of the conservation easement, with your client as reflected in this appraisal?
Yeah, I believe, I can. lthough, this easement was never completed, I'm not entirely sure.
Q Would it have been your practice whether the easement was actually completed and donated or not to share the valuation in the appraisal with your client?
It would have been my practice as the project was going along to share values along the way with my client. Do I have a specific recollection of this? No.
Q I understand, but you said it was your practice and I appreciate that.
MR. SOLOMON: PX 132, please. It's already in evidence.

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Q Ma'am, would you be comfortable while they're looking for it to look at it on the screen if we move along?
Yeah, if I could look at all the parts we need.
Q Then let's wait.
MR. SOLOMON: Thank you.
Q This is a document dated June 23, 2014 addressed to Mr. Eric Trump, Cushman & Wakefield letterhead, again, from David Mc rdle. Do you see that?
I do.
Q Do you have an understanding why Briarcliff Manor Development, LLC was retaining Cushman & Wakefield if you had already retained them, as we saw in that other document, a few months before?
MR. ROBERT: Objection.
THE COURT: Ground?
MR. ROBERT: ttorney-client privilege. "Do you have an understanding why Briarcliff Manor Development, LLC was retaining Cushman & Wakefield if you had already retained them?" It would go to conversations Ms. Dillon had with her client.
THE COURT: Response?
MR. SOLOMON: I don't believe that's in connection with legal advice. The witness has testified that there is a process in determining whether to place a conservation easement on a particular piece of property and I believe the

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witness testified there are preliminary steps and then there is actually a formal appraisal. I'm just trying to understand is this the next step in the process to get to the formal appraisal.
MR. ROBERT: Those were general questions. I think you started them all at a high level and now we're getting into specifics as to this particular engagement and this particular assignment.
THE COURT: Can you just, please, read back the question.
(Whereupon, the requested portion of the record was read back.)
THE COURT: I don't see it as legal advice. Overruled.
Sitting here today, this is a little confusing for me because I haven't had a chance to look at what was the prior appraisal.
MR. KISE: The question as framed is a yes-or-no question. So if your ruling is can she answer, does she have an understanding yes or no, I would agree with you that that answer is not privileged. But if he asks, then, what's the basis for that understanding, that would be different.
THE COURT: I will buy that.
MR. SOLOMON: My first question was does she have an understanding because if the answer is she does not, then

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we don't need to go further.
Q Do you have an understanding?
Sitting here today, I don't have an understanding without looking through these documents in more detail.
Q You mentioned that you did not believe that a conservation easement was ultimately placed on the Briarcliff property. Do you recall that?
Yes.
Q If you look at the intended use here -- highlight that. "To document the value of a conservation easement placed," past tense, "On a parcel of land for federal and state income tax purposes."
Can you explain if you don't believe a conservation easement was placed on the property, why they would be using the past tense in this retention letter or engagement letter?
In my experience, there are sometimes typographical errors or misstatements and I believe that would be a typographic or a clerical error.
MR. SOLOMON: 3127 which is already in evidence.
Q This is an e-mail to you from Mr. Mc rdle dated July 30, 2014. "Sheri, here is the revised appraisal." Do you see that?
Yes, I do.
Q Okay. gain, on page 3 of 113 for the document, the third paragraph, "Trump Briarcliff Manor owned a parcel of land

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in Briarcliff Manor, New York, the parcel over which it has placed." gain, is that just a typographical error?
s I look here, yes. This is not a final appraisal and I can see that because it says donated to XXX. So it appears to be in contemplation, but using the past tense.
Q If you turn to page 4 of 113, you will see here, again, the, "Final Value Conclusion of Conservation Easement $43.3 million." Do you see that?
I do.
Q Did you share that information with your client in or about July of 2014?
I don't recall.
Q Would it have been your practice to share that information with your client upon receipt?
I didn't share every bit of information I got along the way. t various points in times, I would have shared some values with the client.
Q Do you believe this was one of those various points in time?
I have no recollection of whether I did or not.
THE COURT: That's not the question. The question is whether you would have, not whether you recollect that you did or didn't.
THE WITNESS: I don't know if I would have because I don't see all the other e-mail traffic around this. I

don't know if there is a valuation two weeks before, two weeks later. I don't know if this particular valuation was relevant. There's lots of activities with valuation because lots of new facts and information come in and can make things change from time to time.

Q But you do endeavor to keep your client informed of the changes of the facts, right?

Only if it is material and relevant.

Q Is the value of a conservation easement of $43,300,000 material and relevant?

It may or may not have been. If I would have shared that number with them a month ago, it wouldn't be relevant if it is about the same number.

Q Is it fair to say if you hadn't shared that number with them previously, you would have shared it with them at that time?

If if if, yes, but again, I'm not saying whether I did or not and I'm not trying to be difficult. I just want to be accurate.

MR. SOLOMON: PX 910, please. This is an e-mail from Mr. Mc rdle to you with a cc to your colleague Mr. Zemil, "attaching a revised draft." Do you see that?

I do.

Q He states that he "addressed your comments." Do you see that?

I do.

Q Please turn to page 6 of 217. Do you see the value of the conservation easement has now increased by $1.9 million to 45,200,000?

I do.

Q Would you have shared that information with the client?

gain, we can see this appears to be a work in progress. I'm not sure which works in progress I would have shared or not shared along the way. Only when I felt it was relevant material and a decision needed to be made would I share that information.

Q This is a difference of almost $2 million in the value of the conservation easement from the appraisal we saw earlier, correct?

Yes, it is.

Q nd is that something you would have shared with the client?

gain, not knowing where we were in the process, I can't tell you yes or no would I have done that.

Q We've been talking about the 71 hypothetical units in these appraisals, correct?

Yes.

Q Didn't you and Eric Trump know by no later than June of 2014 that Briarcliff Manor Development did not have the absolute right to build 71 units?

I can't speak for what Eric Trump knew or didn't know. s for myself, I don't recall. You'd have to refresh me with some documents, if you have something that will help me.

Q Did there ever come a point in time that you became aware that Briarcliff Manor Development did not have the absolute right to build those 71 hypothetical units?

I don't recall if it was 71 units or some other number, but that wasn't particularly relevant to me, and that's because it doesn't matter whether you had the absolute right or not in valuing this. gain, it is a hypothetical exercise and what you're trying to show is what is the highest and best use of the property that you're intending to place a conservation easement over. nd then you hypothetically take a look and design and design either buildings or commercial space or whatever the case may be and it doesn't require you to have any permits, any entitlements.

So whether it was 71, 69, 105, there is a number that you thought is, you know, something that is physically possible, feasible, legally permissible, and it doesn't require you to be permitted. It just requires it to be permissible and things change over time, so you certainly don't have to go and get all the entitlements in place.

MR. SOLOMON: Your Honor, move to strike as non-responsive.

MR. ROBERT: It is absolutely responsive.

MR. KISE: It is, Your Honor. She answered the question. He just doesn't like -- Mr. Solomon just doesn't like the answer.

MR. SOLOMON: We like the answer, Mr. Kise.

MR. KISE: Then why are you moving to strike it?

MR. SOLOMON: Because it is not responsive to the question.

THE COURT: Let me just check. I'm so happy --

MR. KISE: It looks very responsive to me.

THE COURT: -- we have the immediate transcript here. It is stricken because it is not responsive to the question which is a yes-or-no question. Is that --

MR. SOLOMON: May I --

THE COURT: Is that how you perceived it yourself, Mr. Solomon, that it is a yes-or-no question?

MR. SOLOMON: Yes, Your Honor. May I ask the Court for a readback of that question, please.

THE COURT: Sure. Please, read back.

(Whereupon, the requested portion of the record was read back.)

I don't remember.

Q Let's see if we can refresh your recollection.

MR. SOLOMON: May I, please, have marked for identification PX 3275.

Q Ms. Dillon, do you recognize this document to be the

amendments to the original offering plan for the residences at Trump National Golf Club Condominium?

I can read what it says, but I don't recognize it from past experience. It looks like lots of documents I've seen in the past.

Q Please turn to page 37 of 99. This in particular is mendment No. 8 to the original offering plan (a/k/a mendment No. 4 to the second restated offering plan) of the residences at Trump National Golf Club Condominium."

You will see that this document is dated May 6, 2004.

I do.

Q nd, "roman numeral one, reduction in size of the condominium," do you see that?

I do.

Q nd it still maintains the 16 golf villa residential units on the third line. Do you see that?

Yes.

Q nd then it --

Well, actually where? I'm sorry.

Q That's okay. Third line.

Okay. Yes, I do.

Q "(16) golf villa residential units" and now it is 31 residential units in the Park Briar. Do you see that?

I do.

Q Does that refresh your recollection that the sponsor

voluntarily reduced the number of units it could build from 71 to 31 in 2004?

No. It refreshes my recollection that there were lots and lots of amendments and in this particular document, at this particular time, I have no independent recollection of it. I see what the document says and I can read the words.

Q Okay.

MR. SOLOMON: Your Honor, we offer this in evidence.

MR. KISE: Your Honor, I'm not sure what basis there would be to offer this in evidence. She doesn't recognize it. There is no exception to the hearsay rule that he's articulated. It was used as you can use anything to refresh recollection, but that's it. I mean, that's it. I mean, that's fine. We didn't object to his question because his questions were "would this refresh your recollection," but it is not substantively admissible in evidence. There is no foundation. There's nothing to support the admission of this in evidence at all. It is hearsay.

THE COURT: Why is it not hearsay or what exception might there be?

MR. SOLOMON: Certainly. There is a matter of public record, Your Honor. These are amendments to a condominium declaration that are publicly filed. They were

also produced from Morgan Lewis' files to us, so there is no question about authenticity or--

THE COURT: uthenticity doesn't do it. Sorry. Go ahead.

MR. SOLOMON: If that's not an issue, Your Honor, I won't address that, but it's not hearsay. These are publicly-available documents. These matters are a public record.

MR. KISE: That's not demonstrable from the face of the document. We can't tell one way or the other. If it came from Morgan Lewis, that's fine; but they're not the public repository last I checked.

THE COURT: How do we know it's a public record? I know these things are routinely filed, but I don't know that this was filed.

MR. KISE: We don't have to take up the Court's time now. If they can demonstrate -- I'm not saying it is or it isn't. I'm saying you can't tell from this record that's presented here and we want to be very careful. The witness on the stand is very careful because she unlike litigators who are very loose with things, tax lawyers tend to be very, very precise.

THE COURT: The objection is sustained.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3275.)

Q Do you know if amendments to condominium declarations in the State of New York are filed with the ttorney General's office?

MR. KISE: Objection. Foundation.

THE COURT: She hasn't been qualified. lthough, she may be as an expert at this point, right?

MR. SOLOMON: I was asking her knowledge, Your Honor, not as an expert, but --

THE COURT: But --

MR. SOLOMON: We'll move on. We offer it for notice of the fact that it was reduced to 31 units not necessarily for the truth of the matter asserted and we will address that issue at a later time?

THE COURT: Notice to whom?

MR. KISE: To whom?

MR. SOLOMON: Notice to --

MR. KISE: Morgan Stanley.

MR. SOLOMON: Please, let me finish. Counsel --

THE COURT: ll right.

MR. SOLOMON: Briarcliff Manor Development, LLC which is a part of the umbrella organization in the Trump Organization. That's the entity, that's the sponsor that executed this, that filed this, that voluntarily reduced the number of units.

THE COURT: It's even more than notice. They wrote

it so --
MR. KISE: Your Honor.
THE COURT: Yes?
MR. KISE: If they solve the hearsay problem, if it is a matter of public record, I don't know why we are debating it. They just simply demonstrate that it's a public record. Otherwise, again, it is notice to whom because there's no demonstration --
THE COURT: Notice to the author.
MR. KISE: This is our official document. It might be Morgan Stanley's document, but there is no demonstration it is ours. I'm not debating one way or the other. I'm saying in this record as it stands right now, it is not there. On a break, I'm sure they could find it if it is public record. Most everything is online now.
THE COURT: It's admitted into evidence as notice of the statements therein to Briarcliff Manor, whatever the corporate entity is known as.
Q Ms. Dillon, do you remember specifically analyzing the eighth amendment and providing to your client your conclusion that it reduced the number of luxury residential units that it could build from 71 to 31?
MR. ROBERT: I just want to be very careful that this is a yes or no and beyond that, I will object that it is privileged.

THE COURT: Is that a yes or no?
MR. SOLOMON: For the moment, it is a yes or no, Your Honor; but I will say that the Court has actually ruled upon the documents that I'm about to show this witness in-camera and determined that they are not privileged. So this is a yes or no. I'm laying my foundation for the next document.
THE COURT: Please answer yes or no.
I analyzed thousands of documents for this client over the year. Whether this was one of them, I don't recall; but if you can help me, that would be great.
MR. SOLOMON: May we, please, mark PX 3261 for identification.
Q Ms. Dillon, this is an e-mail chain from June 2014 between you and Eric Trump, correct?
Yes, it is.
Q nd the top e-mail, you wrote to Mr. Trump, Eric Trump, "Hi Eric. In going through the documents, this is what I see happening."
You first lay out what happens in the original offering plan and declaration. Do you see that?
I do.
Q You see "Park Briar units, 31"? Do you see that, ma'am?
Yes, I do.

Q Okay. Do you see, "Highlander units, 40"?
I do.
Q Then you analyze what happens under the first amendment to the declaration and the eighth amendment to offering plan, reduced size of condominium. Do you see that?
I do.
Q That was the eighth amendment we were just looking at, right?
That would be my expectation.
Q Now, there are still 31 Park Briar units, right, and zero Highlander units?
Yes, that's what it says.
Q So the number of units that the sponsor could build as of right was reduced from 71 to 31 according to your analysis as well as the language of the eighth amendment?
That's what I understood in this e-mail.
Q Do you know if Mr. McConney and the Trump Organization still valued on the Statement of Financial Condition the ability to build 71 units as of right?
MR. KISE: Objection; foundation.
THE COURT: Overruled. She knows or she doesn't.
I have no knowledge one way or the other.
Q Let's turn to the Seven Springs project. I think we've established that you're familiar with the property located in the Towns of Bedford, New Castle and North Castle, right?

Yes, we have.
Q Did there come a time that you on behalf of Seven Springs, LLC began work on a potential donation of a conservation easement?
Yes.
Q Was that in or about October of 2012?
I don't recall the date.
Q Do you recall Robert Heffernan? Excuse me. Yes, Heffernan.
I do know Mr. Heffernan.
Q nd how do you know Mr. Heffernan?
He is an appraiser that from time to time was consulted, did various work.
Q Did you retain him in or about October 2012 on behalf of Seven Springs to provide an estimate of the fair market value of a portion of the property of Seven Springs located in New Castle?
I do not recall the dates and I don't recall exactly what he was retained for, but I believe at one point in time, Mr. Heffernan was retained to take a look at a part -- a piece -- overall Seven Springs property.
MR. SOLOMON: Take one step back, if I may, Your Honor. I think I may have forgotten to move PX 3261, Ms. Dillon's e-mail chain to Eric Trump.
MR. ROBERT: Objection. Statute of limitations and

I believe it is a privileged communication.
THE COURT: Overruled. Granted. It is in evidence. It is business advice in my opinion as I've already held.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3261.)
Q Ms. Dillon, does this refresh your recollection as to when you, you on behalf of your client, retained Mr. Heffernan?
Yes.
Q Was that in or about October of 2012?
Yes.
Q If you look at the second paragraph beginning, "the scope," do you see that?
I do.
Q Second line, "Estimating the fair market value of a conservation easement placed on the client's property located in the town of New Castle, New York." Do you see that?
I do.
Q Is that your signature on the last page of that document?
Yes.
MR. SOLOMON: We offer PX 908 in evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. Granted. It is in.
(Whereupon, the Document was marked in evidence as

Plaintiff's Exhibit 908.)
Q Do you recall the estimate provided by Mr. Heffernan as to the fair market value of the conservation easement referenced in this engagement letter?
My recollection is he never completed the project.
Q Okay. My question was somewhat different.
MR. SOLOMON: May I ask for a readback, Your Honor?
THE COURT: Yes, readback, please.
(Whereupon, the requested portion of the record was read back.)
No, because there wasn't one.
Q Do you recall if Mr. Heffernan provided an estimate of the value for the lots in New Castle?
He may have done a preliminary. I just don't recall.
MR. SOLOMON: Could we pull up the 202-G statement, paragraph 52. I'm sorry. Paragraph 55.
Q Ma'am, this is a statement under rule 202-G of our local rules here in New York for court practice. The beginning paragraph 55 is the allegation by the plaintiff of an undisputed fact and then the response from the defendants is below. Do you see that?
It seems to not be an undisputed fact. It looks disputed.
THE COURT: I don't know what you mean by "undisputed fact."

MR. SOLOMON: The response from the defendant. Your Honor, I will withdraw the question.
THE COURT: Good.
MR. SOLOMON: nd rephrase, if I may.
Q The paragraph 55 is the allegation by the plaintiff of what is an undisputed fact. The response is the response by the defendants. Do you see that?
I'm very confused. It looks to me like 55 is an allegation and the response disputes it, so it is not an undisputed fact.
Q I understand, but after it disputes it, "There's an explanation and further discussion where it states Mr. Heffernan indicated he "didn't specifically recall" the preliminary value range he determined, but he recalled an e-mail back and forth with Bob Leonard that he was asking (Mr. Heffernan) why (he) was coming in at a number somewhere around $700,000 a raw lot." That's the response from the defendants.
Does that refresh your recollection as to the number Mr. Heffernan came back with for the lots in New Castle?
I can read what it says here today, but I don't recall the preliminary numbers he was -- that he apparently provided. I have no independent recollection of it.
Q Okay. Just so we are clear, again, Mr. Leonard was affiliated with your law firm?
Yes, he was one of my colleagues. He was an associate

that worked with me.
Q He was at Bingham with you at that time?
Yes.
MR. SOLOMON: Can we, please, mark PX 3296.
Q Ms. Dillon, have you had an opportunity to review the e-mail chain?
I'm still working through it.
Yes, I've had a chance to review it.
(Continued on the next page.)

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Q Great.
Does this e-mail chain refresh your recollection as to whether Mr. Heffernan provided a preliminary view as to the value of the lots in New Castle?
I see that Mr. Heffernan is providing preliminary views, but I have no independent recollection of those numbers. I do know we worked with him. I don't disagree with that, but I just don't recall all of this since he ended up not being the appraiser on the project.
Q You have no reason to doubt that he did in fact provide this information to Mr. Leonard in or about December of 2012, do you?
I have no reason to doubt the authenticity of this e-mail.
Q Let's move forward into 2013, please.
Were you aware that at a Town of Bedford Planning Board meeting in May 2013, an attorney for Seven Springs LLC agreed to restrict construction on the New Castle and North Castle portions of the property in order to obtain approval for the subdivision of the lots in Bedford?
I was not aware of that at the time. I have some awareness derived in the course of these proceedings and historically I -- yes, so during the course of these proceedings, not just here today, but overall I've become aware -- yes, go ahead.

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Q I'm sorry. I didn't mean to interrupt you.
No, go ahead.
Q Maybe I can clarify.
Prior to 2020 were you aware that an attorney for Seven Springs LLC at a town planning meeting agreed to restrict construction at the New Castle and North Castle portions of the property in order to obtain approval for the subdivisions at the lots in Bedford?
I had an overall awareness of some activity, but I did not have a specific awareness of that -- of the particular planning meeting.
Q My question wasn't whether you were aware of the planning meeting. My question was were you aware of the results of the planning meeting?
Can I have the question again? I'm not sure I understood that.
MR. SOLOMON: Your Honor, may I ask for a read back?
THE COURT: Read back, please?
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
I don't recall being aware of that level of specificity, but I may have had -- again, a general awareness of the results of the planning board meeting developed at some point in the project.

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Q Do you recall providing testimony in connection with the investigation conducted by the ttorney General's office in this matter?
Yes, I do.
MR. SOLOMON: Could we pull up Ms. Dillon's testimony, page 660, line 19?
Q You recall this was done during COVID; right?
I remember that distinctly.
Q So we had -- the transcript may not be clear, but we'll go through it, you were asking and we were discussing having the document on the screen for everyone to share. Do you recall that? nd it had to be moved for a period of time so you could see different portions of it?
Yes, yes.
Q nd my colleague, lex Finkelstein, was the one who was moving the documents. So when we see this on the transcript -- we'll be able to see this, 660, line 19. Okay:
"QUESTION: I'm going to ask lex to pull up our first electronically shared exhibit. It is a May 17, 2013 newspaper story from the Bedford/Pound Ridge Record Review.
Ma'am, as you've done in your prior sessions, if you could please tell lex when you refer to a portion and you want him to move down that would be helpful."
"MR. SOLOMON: I'm going to mark this as Exhibit 52."

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nd then you go on. The document is being advanced.
"QUESTION: Does reading this article refresh your recollection about any events involving Seven Springs before the Bedford Planning Board?
" NSWER: No, I was not involved in that process.
"QUESTION: That wasn't my question."
"MR. SOLOMON: Can I have the court reporter please read back my question?"
Question is read back.
" NSWER: --
It reads your answer; correct, just to clarify?
Yes.
Q "Because I was not involved in the process, this article does not refresh my" -- excuse me -- "doesn't refresh my recollection about things I wasn't involved in.
"QUESTION: Ma'am, you will agree with me someone could have told you about it, right?
" NSWER: Someone could have told me about it.
"QUESTION: Right. So this article could have refreshed that recollection, even if you weren't involved in the events before the Planning Board?
" NSWER: This article does not refresh my recollection."
Was that your testimony during the investigatory

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phase --
Yes.
Q -- of this?
MR. ROBERT: Objection. He's conflating refreshing the recollection with trying to impeach his own witness. I mean, this is consistent.
THE COURT: Overruled. I don't see any problem with this at all. He's just asking her if she sees that was her testimony. I don't know what you're reading into the question.
MR. ROBERT: There would be no reason to do that other than if it refreshed her recollection.
MR. SOLOMON: Can we go to page 663, line 8?
THE COURT: What was the purpose of asking her if she --
MR. SOLOMON: That she previously had no knowledge about this planning meeting which is why we're going to this next portion which is a short question and answer, Your Honor.
THE COURT: So it is the admissibility of that depending upon the admissibility or the answer or the testimony you're going to read now?
MR. SOLOMON: Yes, it's being linked together.
MR. KISE: It looks like he's using something where she didn't have a -- refresh her recollection -- to refresh

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her recollection now and in either case it didn't, but if Mr. Solomon is going to tie it together here we're on the edge of our seat.
MR. SOLOMON: Glad I can keep you entertained. Can we please go to page 663, line 8:
"QUESTION: Were you aware that Mr. Martabano" --
Q Mr. Martabano is the attorney at the planning meeting, do you recall that?
I have since. Yes, I recall that.
Q "Mr. Martabano on behalf of Seven Springs agreed to, quote, 'restrict construction near the end of the road serving Seven Springs to two houses to help resolve the dispute over the need for an access road?'"
" NSWER: I was -- I'm not aware of that if that's accurate."
THE COURT: "I was not."
MR. SOLOMON: Excuse me. "I was not."
Thank you, Your Honor.
"QUESTION: I asked you to assume it was. You left all of these negotiations to the land use attorneys representing Seven Springs; correct?
" NSWER: I was not involved in this. I didn't leave or not leave. It wasn't my decision.
"QUESTION: To your knowledge who was involved in this then?

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"Because I wasn't involved, I do not know."
So at that time you had no recollection of this planning meeting; right?
t that time I was -- I think I've been consistent. I was not at that planning meeting. I was not involved in the planning meeting. Have I learned things about the planning meeting? Did I know some things? But I didn't know they came about from the planning meeting, yes. It's complicated, but for the most part it didn't matter. It didn't matter. It's again back to hypothetical. It's a hypothetical subdivision that's being drawn. No one needed to be permitted. The standard is legally permissible and the courts have ruled time and time again it's a waste of everyone's resources for taxpayers, landowners, etc., to impinge upon a planning board, zoning boards and everybody else that you don't have to actually be permitted and entitled for anything.
MR. SOLOMON: Move to strike as nonresponsive, Your Honor.
THE COURT: Stricken as nonresponsive.
I'll ask that the witness be taken out for a few moments so I can talk to Counsel not in her presence.
(Whereupon, the witness is excused from the witness stand and exits the courtroom.)
THE COURT: Mr. Solomon, I feel like we're two or three levels away from anything that's relevant. This all

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seems to be what happened. She saw something, but didn't you say something different what she knew about all this stuff?
MR. SOLOMON: It goes to the valuation of Seven Springs, Your Honor. They valued it as if they could build 24 lots on the three properties. That's what the appraisal does, which is what we will get to. However, previously, they had agreed to restrict the number of lots to I think 12 or 13.
THE COURT: Okay. But what does that have to do with whether she remembers what happened at a meeting?
MR. SOLOMON: Because this witness was the one who retained the appraiser, who gave the appraiser the information necessary, was the conduit for the appraiser and if she knew this and didn't give it to the appraiser that's relevant. If she didn't know it and other attorneys at the Trump Organization knew it, that's relevant because that information should have been provided to the appraisers when they projected their 24 hypothetical lots by law and we have an ppellate Division decision which is coming up shortly which said they have -- the Seven Springs LLC entity has no access through ragon Road. So they didn't have a second access and this restriction was binding on them.
THE COURT: Okay. It seems to me this has become a game of got you, didn't you say that, didn't you say this,

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but then you said that. I'll let you go ahead because there is no jury and I'd like to afford some leeway, but maybe if we could get to the heart of the matter quicker, Mr. Kise?

MR. KISE: Your Honor, I think what the witness was trying to say -- what Mr. Solomon asked it be stricken is --

THE COURT: That was a speech. That was not responsive.

MR. KISE: No, I'm just saying she's explaining why what you're saying is correct that we're just going around in circles here because from a tax perspective, from an appraisal, for IRS purposes, for conservation easement you don't get into all of this stuff about whether you had this permit or didn't have this permit or what you knew or what you didn't know.

If Mr. Solomon wants to use a witness to establish the points that he's making, that's fine, but this witness has said both today and before based on the testimony there that she wasn't part of the process, she didn't have anything to do with the process, she can't testify to the process and, most importantly, it would not have been relevant to her job, her role. So we are just kind of going in circular fashion here because her role is with respect to advice on conservation easements. She's already said twice it's been stricken that when you do that you're not looking at actual permits, actual this, actual that. She's the

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expert on that and so I think that she's testified that's why she wouldn't have a foundation here to have any of this knowledge. But if we want to continue to go around, it's their morning. I don't know that any of this has any relevance.

THE COURT: I'll let the question continue in the manner that Mr. Solomon thinks is relevant.

MR. SOLOMON: Your Honor, we will endeavor to move quickly on this.

THE COURT: Okay. Let's get the witness.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: I just want to make a general statement without any accusations that when a witness is asked to depart the courtroom, nobody should attempt to speak to him or her. nd let's go on.

MR. SOLOMON: Thank you, Your Honor.

We'd ask to mark for identification PX 899.

For the record, it is a July 16, 2014 e-mail on Vinson & Elkins letterhead, Ms. Dillon's letterhead in particular to David Mc rdle, Senior Managing Director at Cushman & Wakefield.

Q Ms. Dillon, is that your signature on page four of the exhibit?

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Yes, it is.

Q Did you send it to Mr. Mc rdle in or about July of 2014?

I would assume so.

MR. SOLOMON: We offer it into evidence.

MR. ROBERT: Objection. Statute of limitations and privilege.

THE COURT: Overruled. Give me a second.

(Whereupon, there is a pause in the proceedings.)

THE COURT: Overruled on both grounds. It's in evidence.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 899 in evidence.)

Q Was this the engagement letter you were retaining Cushman and specifically Mr. Mc rdle to provide an estimate of the value of the potential conservation easement for the Seven Springs property?

It was to provide consulting services, yes, related to the estimated value of the potential conservation easement.

Q nd did he provide an analysis of the estimated current value of these lots as of a particular valuation date?

I can't recall how far along we got before the project was discontinued in 2014.

Q Why was it discontinued in 2014?

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MR. ROBERT: Objection.

THE COURT: What's the objection?

MR. ROBERT: Why something was done and why if a retention was discontinued is attorney/client privilege. It clearly falls within if it was a direction from the client as to do or not do something that's a continuation in the course of giving legal representation.

THE COURT: It's business. Overruled.

Unless you want to withdraw it on the ground --

MR. SOLOMON: I've learned, Your Honor, if you rule in my favor to be quiet.

THE COURT: I ruled in your favor.

Why was the project discontinued?

THE WITNESS: I have no specific recollection, but I can certainly give you the typical reasons projects would be discontinued.

THE COURT: Do you want that or not?

MR. SOLOMON: I will take the typical reasons for the moment. Thank you.

The typical reason is a landowner just isn't ready, they haven't made the determinations of what restrictions they want to put on property, which land they want to keep out of the restricted property. That's the biggest reason.

Other reasons are there is just simply not enough time to get it done, but those tend to be the biggest reasons as you

have not yet decided what exactly you want to do with the property, whether you want to retain it because, again, it's in perpetuity, which is forever and it affects not just that landowner but all landowners.

Q Is also one of the reasons for tax planning purposes?

That could be one of the considerations.

Q Does it refresh your recollection as to whether in this situation it was discontinued at that time because Mr. Trump did not need additional tax deductions for tax year 2014?

MR. KISE: Objection. That's -- I mean, if she wants to answer yes or no, perhaps, but once you get into the substance, that's squarely within the attorney/client privilege. I mean, I think all of it is respectfully, Your Honor, but she is a tax lawyer being engaged to provide tax advice and the conservation easement is -- the purpose of doing one is to get a tax deduction. So it's all squarely within the confines of the privilege. So I would respectfully disagree, Your Honor, it's not business. It involves business matters, but it's at the core of the attorney/client relationship with a tax lawyer.

THE COURT: Overruled. The question is whether that was a factor -- if she knows whether that was a factor in why the process was discontinued.

THE WITNESS: Is it time for me to answer?

THE COURT: Yes, it's also a yes or no.

I believe it probably was one of the considerations among many.

MR. SOLOMON: Could we please put PX 133 in front of the witness? It's already in evidence.

THE COURT: Five-minute warning and then we'll come back. It's not the end of the -- we started early. That's what's throwing you off.

MR. SOLOMON: I'm just focused.

Q Do you recognize what was marked as PX 133?

I have seen this before.

Q Okay. Do you have an understanding as to why Mr. Eric Trump -- withdrawn.

Do you have an understanding as to why this letter was addressed to Mr. Eric Trump at Seven Springs LLC directly when the prior letter that we saw was addressed to you?

MR. ROBERT: Objection. ttorney/client privilege.

THE COURT: It's from Cushman & Wakefield. Overruled.

My understanding would be at this point in time it appears that the project was still going forward and we were seeking a formal appraisal that would be provided to the Internal Revenue Service since this is being done for the purpose of federal and state income tax purposes.

Q Okay.

MR. SOLOMON: Can I have PX 1861? I'm jumping

forward.

Q When the project was either terminated or put on hold in 2014, had you already learned of Mr. Mc rdle's estimate of the value of the lots for the potential conservation easement?

I don't remember.

MR. SOLOMON: Your Honor, this may be a good point.

THE COURT: Is this a good time? ll right. Let's just make it 12:10 everybody and then we'll go to 12:55 or so.

(Whereupon, there is a recess in the proceedings.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: Witness?

MR. ROBERT: Do we have a minute before the witness comes in?

THE COURT: Sure.

Hold off on the witness.

MR. ROBERT: re we going to finish today with Ms. Dillon?

MR. SOLOMON: In light of the Court's instruction, I have no more than 20, 30 minutes, max.

MS. GREENFIELD: That's after we finish the witness?

MR. ROBERT: That's fine. I just want to know who is on for Monday.

THE COURT: Now witness?

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: So as everyone else has just heard, we're hoping to finish with this witness this morning. So let's keep the questions moving and the answers moving.

CONTINUED DIRECT EX MIN TION

BY MR. SOLOMON:

Q Ms. Dillon, could we please put -- I'm sorry -- PX 104 in front of you?

Is this an engagement letter signed by Eric Trump on behalf of Seven Springs LLC dated June 1, 2015?

Yes, it is.

Q nd was this engagement letter executed in connection with restarting the potential donation of a conservation easement at Seven Springs?

Yes.

MR. SOLOMON: Could we please mark PX 195 for identification?

Q This is an e-mail from Timothy Barnes to you and Mr. Zemil with a cc to Didi Yep. Who is Timothy Barnes?

Mr. Barnes was the lead appraiser on the Seven Springs project.

Q nd do you know who Didi Yep is?

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Yes, that was his second -- the second appraiser.
Q The second e-mail draft is attached. Let me know if you have any questions. Do you see that?
I do.
Q Did you see -- did you receive that in or about November of 2015? Specifically November 6th is the date of the cover e-mail?
Yes, I fully expect I received it.
MR. SOLOMON: Your Honor, I offer this in evidence.
MR. ROBERT: Objection. Statute of limitations and the attachment is hearsay.
THE COURT: Statute of limitations overruled.
What is it being offered for.
MR. SOLOMON: For notice, Your Honor.
THE COURT: It's in simply for notice.
MR. ROBERT: Notice to whom?
THE COURT: The recipients?
MR. SOLOMON: Ms. Dillon and Mr. Zemil at this point in time.
THE COURT: Okay.
MR. ROBERT: Thank you.
Q If you please turn to page 5 of 139 of this exhibit, "Value Conclusions." Do you see that?
I do.
Q Is this the method that we've been talking about

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previously where you value the property before and after the easement, make whatever adjustments are appropriate and then the difference is the value of the easement?
Yes, that is the before and after method that we talked about before.
Q So the before method values the entire Seven Springs property at 56,500,000. Do you see that?
I see.
Q Did you advise your client in or about November of 2015 that the appraisal had valued the entirety of the property at approximately $56.5 million?
I don't recall.
Q Would it have been your practice to do so?
I don't recall if we would have had a discussion about this in November. There are thousands of e-mails and conversations about this as the process goes through, so I have no idea if I told him the before value of the property or if I told anyone -- it would have been -- I don't know. t some point I would have advised probably the value of the easement. That's what they were interested in.
Q Would you have discussed how that easement was calculated with the client?
I may have.
Q Okay. You say there are many e-mails back and forth and the like. When you received the first draft of an appraisal

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the first time that you find out what the appraiser is coming in with for the value of the property and the value of the easement, would you advise your client at that point in time?
I was in touch with the appraisers on a regular basis, so I always had some understanding of where they were. t various points in time I would have explained the indicated value of the easement to someone at the organization.
Q Okay. Would you have done it the first time that you found out what the value of the easement or the entirety of the property was?
Not necessarily. My practice would be to understand it and see if I thought that was reasonable, if there were facts that had been omitted, if they understood things, if they had questions. Often these values are very preliminary and we learn things as the project goes on is the things that may or may not affect value.
Q So is it your testimony that you don't always keep your client informed of changes?
It is my testimony that I appropriately keep my client informed of changes and I respect all of my duties and obligations and ethics as a lawyer.
Q Do you recall when you first, a general time frame, advised your client that the value of the entirety of the property was 56.5 million?
MR. ROBERT: Objection. That's not the testimony.

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THE COURT: That was just a question. Does she recall when she first notified?
MR. ROBERT: The testimony was that she doesn't know if she ever told the value. She would have told them the value of the easement, not the value of the property. That was the testimony, Your Honor.
MR. SOLOMON: That's an easy foundation, Your Honor.
THE COURT: Okay.
Q Do you believe you ever told your client what the value of the property was as reflected in the appraisal?
My expectation is I certainly would have given them the appraisal at some point so they would have had that. Probably also at some point in time I would have said here's how it was calculated, but I can't recall when and I don't know if I would have done it at various points along the way, but I would have been in fairly regular communication about the value of the easement.
Q When you received this draft appraisal in or about November 2015, did you communicate with anyone at the Trump Organization as to how they were valuing Seven Springs on the statement of financial condition?
I don't recall. I don't think so, no.
Q Did you ever communicate with anyone at the Trump Organization as to how they were valuing Seven Springs on the

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statements of financial condition?
Not that I recall.
MR. SOLOMON: Could we please mark PX 3114 -- I'm sorry. It's already in evidence. If we could show the witness?
Q Ms. Dillon, you see this is an e-mail chain? t the top it's from Mr. Weisselberg to Rebecca Marrocio, but the ones below that it's from you to Mr. Weisselberg, Mr. Trump with a cc to Mr. Bender. Do you see that?
I'm sorry, do I see what? I was trying -- I just didn't recognize this. I was trying to see what it was.
Q Take a moment to look at the document, ma'am.
ll right.
Q Pointing to one side, the top e-mail, in this chain that doesn't include --
That doesn't seem to be the same chain I'm looking at. I'm confused. What's on the screen doesn't seem to be what I have.
Q PX 3144?
No, I have 3144. Perhaps that's the difference.
THE COURT: That would make a difference.
I still suggest to follow on the screen because when they highlight lines you don't have to go looking all up and down at a piece of paper. You can see the yellow, but, again, up to you.

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THE WITNESS: Thank you.
Yes, we are on the same page now.
Q Fair enough. Thank you.
You'll see pointing to one side of the top e-mail that doesn't include you, but the one in the middle is from you to Mr. Weisselberg, Mr. Trump with a cc to Mr. Bender. Do you see that?
I do.
Q nd just so we're clear, it's Mr. Eric Trump; right?
Yes.
Q Okay. Did you send -- and the subject is "Easement nalysis." Do you see that?
I do.
Q Did you send this to Mr. Weisselberg, Mr. Eric Trump and Mr. Bender on or about September 23, 2014?
Yes.
Q If you look at the chart that's attached to that, the next page, "Potential Charitable Contribution nalysis." Do you see that?
I do.
Q nd the next page you are suggesting topics they should keep in mind. Do you see that?
I do.
Q Did you provide regular updates to your client as to the progress of conservation or potential conservation

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easements?
I don't know what you mean by -- could you restate -- could you read back that question? It was confusing to me.
MR. SOLOMON: Your Honor, may we have a read back, please?
THE COURT: Please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Yes, but not things that necessarily looked like this.
Q How would you provide those updates to your client?
More informal e-mails, conversations, things along those lines from time to time and if regular means from time to time, then from time to time. There was no set -- it's not like every Monday we talk about conservation easements or anything like that. It would have been from time to time as I had something to say.
MR. SOLOMON: One moment, Your Honor.
THE COURT: Sure.
MR. SOLOMON: Nothing further, Your Honor.
THE COURT: Wow. Where is Flores?
MR. ROBERT: I was just about to bet the under.
MR. SOLOMON: Nothing further, Your Honor.
THE COURT: Okay.
Transcript continues on the following page....

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THE COURT: Plaintiff, are you finished with this witness?
MR. SOLOMON: Yes, Your Honor.
THE COURT: Good.
Will there be any cross-examination despite what you said previously?
MR. KISE: Not right now, Your Honor. We are going to try and streamline and determine whether we need to call the witness at all.
THE COURT: We should talk scheduling, but should I let the witness go at this point?
MR. KISE: Fine with us, yes, Your Honor.
MR. SOLOMON: Yes, Your Honor.
THE COURT: Okay. I will let the witness go. Thank you.
(Witness excused.)
THE COURT: Let's talk scheduling on the record. Who wants to go first? Should I ask plaintiff since it's still your case?
MR. W LL CE: Thank you, Your Honor. Should we give the witness a moment to leave?
THE COURT: Sure. Go ahead.
MR. W LL CE: Okay, Your Honor. The next witness that we will call on Monday would be Mr. Flores returning to the stand. Our expectation is that examination would take

about an hour. fter that, we would have Mr. Cerrone, the City employee, who I think would also take probably about an hour at that point. My understanding is the defendants have some cross-examination planned for that witness. I think we would then propose to play the Mouradian video tape testimony which is 2 hours and 16 minutes.

MS. GREENFIELD: You anticipate getting through all of that on Monday? Just wanted to be clear.

MR. W LL CE: So our total time, then, would be 4 hours and 15 minutes and then accepting whatever defendants choose to do with their time on those witnesses.

MR. KISE: I would think Mr. Cerrone we'll have questions for, not Flores. nd obviously, the video is the video, but I would -- given how our proceedings go, I think that would be a full day on Monday.

THE COURT: s long as we can finish it all Monday, let's hope.

MR. KISE: It would seem likely.

MS. GREENFIELD: Tuesday, who do you have next?

MR. W LL CE: So Tuesday would be Mr. Orowitz, Mr. Cornwell who would also be brief, and then when that is -- when those two fact witnesses are done, the People would move on to the one expert witness they are going to present as part of this section of our case in -- our case in chief, which is McCarty.

THE COURT: Will there be cross-examination of the two Tuesday witnesses as best you can tell?

MR. KISE: Orowitz, no. Cornwell, yes. nd, obviously, the expert, yes.

MR. W LL CE: I would just clarify that Mr. McCarty has been proffered as an expert in bank underwriting issues, but we will -- and issues of disgorgement. t this time, we are only planning to examine him on the issues of disgorgement. We are reserving any evidence or any presentation on bank underwriting issues until after the presentation of the defendant's case which I you understand will cover a number of bank witnesses anyway, would influence his opinion.

THE COURT: That's okay. Hold on.

MS. GREENFIELD: nd Wednesday?

MR. W LL CE: Wednesday, we will then move on to the defendants, specifically Mr. Donald Trump, Jr. Then after him, Eric Trump and presumably, depending on whatever may happen with appeals, would be Ivanka Trump. nd as we have indicated to the Court, reserve Monday, November 6th for Donald J. Trump, for his testimony.

THE COURT: We like to keep families together.

MR. KISE: What about Garten and Brunnett? re we not calling them?

MR. W LL CE: We will not be taking Garten and Brunnett during our case in chief.

MR. KISE: Okay.

MR. W LL CE: lso, Mr. Greenblatt we will not be taking during our case in chief. They will be moved to our rebuttal list, but we will not be taking them at this time.

MS. GREENFIELD: Do you anticipate getting Eric Trump, Donald Trump Jr., Ivanka Trump pending the appeal all in one day?

MR. W LL CE: Our hope is to do one day for each of them.

MS. GREENFIELD: That would be we are looking at Wednesday, Thursday, and Friday for each of the three Trump defendants. Ivanka Trump is not a defendant.

MR. W LL CE: Correct.

THE COURT: Will there be any cross?

MR. KISE: Not -- well, I don't know about with respect to Ivanka Trump just because to minimize her travel here and I can't really -- none of us here at this table can speak for her schedule and availability next week. Mr. Moskowitz, which I don't -- I don't know if he is still here -- would have to address that. But that would be the only witness, again, just to minimize her having to come back and forth whenever it is that she appears. We may try and just do that collectively.

MS. GREENFIELD: Okay. I want to -- I'm sorry,

but just to be super clear, I understand that we are going to have each of the Trump witnesses on a separate day, but do we think their testimony will take the entire day or are you going to have filler witnesses or anything in between?

MR. W LL CE: Our expectations, it would likely take a full day. t this point, after we call Mr. Trump, we would rest our case in chief is our expectation at this point. So there -- there's no filler witnesses remaining.

MR. KISE: So a question with respect to Ivanka Trump. To the extent -- and again, I can't speak -- I have no idea what her schedule is, but is Ivanka Trump someone that the People -- because I know you're moving a number of other witnesses out of your direct case. Is that someone that you must have in your direct case?

The only reason I'm asking the question, I'm not suggesting an outcome, if for whatever reason her availability becomes challenging, we certainly would be calling her now that we know she's coming and we certainly would -- I'm just trying to figure out whether we can do it all in one day, whether it is a day on their case or a day on our case on that particular witness. But if they feel that they need to have her in their case in chief, that's a determination they need to make. I just don't -- I'm just trying to minimize the schedule conflicts for that witness.

THE COURT: Well, I think it would be preferable if

we could get her Friday and maybe it is up to the plaintiffs to communicate with Mr. Moskowitz about her availability. If not then, when?

MR. KISE: Okay. That's fine.

MS. GREENFIELD: I just want to also point out that Friday is a half day, so whoever's testimony we think is going to take the least amount of time between Donald Jr., Eric and Ivanka, that should be scheduled for Friday just for the Court's logistics.

MR. ROBERT: I would need to know that now because as things stand now, Donald Trump, Jr. on Wednesday and Eric Trump for Thursday and since we need five days notice, can you confirm that now that that's your order?

MR. W LL CE: We provided you guys notice earlier that we might call them as soon as Monday, but I think that is the order. I would propose that Eric Trump be ready to testify whenever Donald Trump, Jr. is completed, so that could be Wednesday. That would be the order, Donald Trump, Jr. and then Eric Trump to clarify.

MR. ROBERT: nd then Ivanka last?

THE COURT: Yes.

MR. KISE: I don't know about prior notice. I just know if we are talking about Wednesday and Thursday, that would be five days in any event, right?

MR. ROBERT: That's fine.

MR. W LL CE: nd we can work with Mr. Moskowitz and the defendants if there are issues with Ivanka Trump or if there is some -- but we are definitely calling her as part of our case in chief.

MR. KISE: Okay.

THE COURT: Okay. I will say again. It is my understanding that defendants do not have a standing to object, but I don't mind them being part of the process as a courtesy, whatever. Maybe Mr. Kise is right. Maybe he does have standing.

MR. KISE: They certainly objected or you allowed them to speak yesterday when I was talking about the other matter in the morning and I told you I didn't think they had a dog in the hunt, but you allowed them to speak in any event.

THE COURT: In any event, Monday, ten o'clock, okay. Thanks, everybody. Great weekend.

(Whereupon, the trial was adjourned to Monday, October 30, 2023 at 10:00 a.m.)

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In The Matter Of:

NYS ttorney General v.
Donald Trump, et al.

David Cerron
October 30, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37

PEOPLE OF THE ST TE OF NEW YORK, BY
LETITI J MES, TTORNEY GENER L OF
THE ST TE OF NEW YORK,

Plaintiff,

-against-

Index No.
452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP;
IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY;
THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP
ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC;
DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER;
TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE,
LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET,
LLC.; ND SEVEN SPRINGS, LLC,

Defendants.

60 Centre Street
New York, New York 10013
October 30, 2023

B E F O R E:

HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Please make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Good morning. Either the room is getting bigger or more people are showing up.

In this case, as in I'm sure others, the housekeeping matters can be explored as actual testimony, not last week's, but I understand we have a couple of housekeeping matters. I'll just start with the plaintiff because they're the plaintiff.

MR. W LL CE: Thank you, Your Honor.

Just the primary issue is that there is a change from the end of last week is the scheduling of the testimony for Ivanka Trump. We've had a number of e-mail exchanges with Ms. Trump and her counsel over the weekend and I think we have come to an agreement we will not be able to complete her testimony on Friday, the 3rd of this week and so the O G had proposed November 8th and 9th, but because of travel obligations of -- that Ms. Trump had, she had proposed Wednesday, November 15, which is not ideal from our perspective, but the O G is willing to book that date and

proceed with her testimony then. We would just need agreement from the Court and from defendants that our case would not actually close with our final witness of Mr. Trump but would remain open for her testimony on the 15th.

THE COURT: Clearly as we work this out in that fashion, there is going to be any -- how long do you think the direct examination would be and how long do we think the cross examination will be?

MR. W LL CE: I think we would certainly complete it within the day, but I don't think it would take a full trial day and that we could do it with three to four hours of testimony.

THE COURT: You mean three to four hours of direct?

MR. W LL CE: Correct.

THE COURT: How long do you think cross examination?

MR. KISE: Probably a little less than that. I think overall it will be a full trial day between the government and the defense. That's I think why the 3rd doesn't really work just because we would get started and they might even finish their direct on the 3rd, but we're fine with the proposal if the Court is okay with it.

THE COURT: I have one creative thought. Let me run it by the person who sits along side of me.

(Whereupon, there is a pause in the proceedings.)

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THE COURT: We have things scheduled for Friday afternoon, the proverbial other cases we have. ny chance of turning Friday into an all day? We would just have to move things, which would be a bit of a pain, but might be a better alternative. Let's hear from both sides.

Plaintiff?

MR. W LL CE: Certainly. I think we would have no objection to that.

MR. KISE: I would have to note, for me, at least I don't know about the rest of us, since that's our only afternoon off for other cases, that may pose a bit of a train wreck on our side just because we've got -- I know it's hard to imagine there is anything else going on in the world right now other than this trial. Certainly happy to explore this afternoon and try and work that out. I'm not philosophically opposed to it, but I just don't know logistically if it's an option.

THE COURT: Let's talk about it after the lunch break. It would be so much easier for her in particular, right?

So other housekeeping matters by the plaintiff?

MR. W LL CE: That was the only issue. Otherwise, we're prepared to proceed on the issue we laid out at the end of last week.

THE COURT: What is the story with Mr. Solomon?

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MR. W LL CE: We'll go off the record for this?

MR. KISE: Sure.

THE COURT: Okay.

(Whereupon, there is an off-the-record discussion held.)

THE COURT: Let's call the next witness S P.

MR. MER: Thank you, Your Honor. We recall to the stand Raymond Flores.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: I'll remind the witness, witness, as I always do, you're still under oath.

THE WITNESS: Yes.

THE COURT: Please proceed. Continue.

CONTINUED DIRECT EX MIN TION

BY MR. MER:

Q Welcome back, Mr. Flores. I'd like to quickly review where we ended your examination a week ago last Friday.

We were discussing the joint venture Vegas property and we had looked at the 2017 Jeff Supporting Data spreadsheet, which is Plaintiff's Exhibit 719 in evidence. nd if we could go to Row 751, which we had looked at before.

It states in Row 751 that the values listed for June 30, 2013 and June 30, 2014 are, quote, "based on the cash

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flow from unit sales prepared by Ray Flores 10/20/2103?"

Do you recall that we had looked at that before?

I believe so, yes.

Q nd I believe you testified that you did recall putting this together, this cash flow analysis, that's referenced in line 751; right?

Yes.

Q Were you aware in this time frame that your cash flow analysis was being used for the purpose of valuing this asset for Mr. Trump's statement of financial condition?

No, I was not.

Q Now, let's go ahead and -- what was the business purpose by the way for your preparation of the cash flow analysis that's referenced here?

I believe I was keeping track of the properties's performance and that's the extent of what I thought I was doing.

Q nd you were doing that at the direction of Eric Trump; correct?

I believe at this time it was David Orowitz.

Q nd at some point in time when you were preparing the cash flow analysis was it at Mr. Eric Trump's direction after Mr. Orowitz left the company?

It would have been -- I don't recall.

Q Let's go ahead and look at the 2016 Jeff Supporting Data spreadsheet, which is Exhibit 742 in evidence. nd if we

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go to Row 816, this is now for the next two years 2015 and 2016. Same note or similar note on Row 816 says "based on the cash flow from unit sales prepared by Ray Flores."

You recall that you continued preparing this cash flow analysis?

Yes.

Q nd am I correct that you were not aware in this time frame that your cash flow analysis was being used for the purpose of valuing this asset in Mr. Trump's Statement of Financial Condition?

That's correct.

Q Now, if we could look at the next two years the 2018 Jeff Supporting Data spreadsheet that's Exhibit 774 in evidence and if we could go to Row 841 that's where Vegas begins.

nd do you see, Mr. Flores, that there is no longer any reliance based on the notation to your spreadsheet, your cash flow analysis, rather?

Can you scroll down, please?

(Whereupon, there is a pause in the proceedings.)

Yes, that's correct.

Q So your cash flow analysis was no longer being referenced as the basis for the valuation in either 2017 or 2018; correct?

That appears to be the case.

Q Let's go ahead and pull up Plaintiff's Exhibit 1208

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native. nd the document I've handed you is a series of e-mail exchanges that include you as a sender and recipient; correct?
Yes.
Q nd you'll see the last page is an attachment that's a document prepared natively. Do you see that?
Can you show me the document, please?
Q Well, just that last page is a slip sheet for an attachment?
Yes.
Q Provided natively. nd we'll look at that in a moment. nd I just want you to notice that's a native attachment. Do you see that?
Yes.
Q nd you'll see in on the first page of the exhibit your e-mail in the middle of page to Mr. McConney, Jeff. " s discussed, please find the updated workbook attached," and then he forwards that on to Mr. Birney in the e-mail above that. Do you see that?
Yes.
Q nd the attachment, the Trump rough and financial model, that's your cash flow analysis; correct?
Yes, I believe so.
Q Let's go ahead and put up the native of 1208.
nd do you recognize this as your cash flow analysis that was forwarded by you to Mr. McConney and that is as of

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June 30, 2017?
Yes.
MR. MER: Your Honor, I ask to move into evidence Plaintiff's Exhibit 1208, including the spreadsheet.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1208 in evidence.)
Q nd if you look at Row 37 of your spreadsheet that has the cash flow to Trump; correct?
Yes, that's what the document says.
Q nd so the value of the cash flow to Trump for your cash flow analysis has a total value of a little over $77 million; is that right?
Yes.
Q Okay. If we could now split the screen and look at Plaintiff's Exhibit 774, which is the 2018 Jeff Supporting Data spreadsheet in evidence that we were just looking at.
If we could go to Row 872 and go over to Column G.
That's the June 30, 2017 value for this property which is slightly over 102 million; correct?
Yes, that's what the document says.
Q Okay. nd that value for the Vegas property as of June 30, 2017 is about $25 million, more than the $77 million value in your cash flow analysis; correct?

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Yes.
Q Were you made aware, Mr. Flores, of a decision to stop using your cash flow analysis to value this Vegas asset for Mr. Trump's Statement of Financial Condition as of the 2017 statement?
No, not that I recall.
Q Before we move on to a new property I just wanted to quickly circle back to Niketown to see if I could refresh your recollection on a couple of points.
You'll recall we had looked at the 2020 Jeff Supporting Data spreadsheet, which is Exhibit 857 in evidence and Row 88 is where Niketown begins, so if we could look there.
Do you recall we had looked at this before?
Yes.
Q nd if you go to Rows 88 to 103 you will see that there is a method used to value the property in 2019 from Rows 88 to 103 that produce a value of 445 million. Do you see that?
Yes.
Q nd then if we just go down to Row 106, you'll see that there is a change in methodology for 2020 that says "value per 20 year discounted cash flow from Ray Flores." Do you see that?
Yes.
Q nd I believe your testimony was that you don't recall performing a 20 year discounted cash flow analysis for Niketown for 2020; is that right?

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Yes, that's correct.
Q nd then I showed you the 20 year discounted cash flow analysis for Nike for 2020 which we could put up on the screen now. It's PX 857. nyway, I believe we put up a spreadsheet and when we looked at that spreadsheet you still did not recall whether it was your work product. Do you remember that?
Yes.
Q So we're going to look at a few more pieces of evidence to see if it refreshes your recollection about the 20 year discounted analysis for 2020.
MR. MER: Let's go ahead and look at an earlier draft of the 2020 Jeff Supporting Data, which is Plaintiff's Exhibit 2293 in native and let's go ahead and look at Row 118 and actually go down a little bit further just so we can see the Niketown section. The other way. Sorry.
Q You see this is the section starting at 86 that relates to Niketown. Do you see that?
Yes.
Q nd in this earlier draft of the Jeff Supporting Data spreadsheet for 2020 you'll see rather than reference the 20 year discounted cash flow analysis, it has -- starting in Row 105 and going down, a method -- keep going -- a method that takes the net operating income shown in 117 and divides it by a cap rate of four percent to produce a value of 265.1 million. Do you see that?

Yes.
Q Do you --
MR. MER: Well, let me move to admit this exhibit, Your Honor.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 857 in evidence.)
Q Do you recall Mr. McConney asking you to come up with additional reasoning -- actually, before we get there I'll withdraw that.
If you look at line 123, you'll see it says "cap rate." nd you see there is a note below it for 6/30/2020 that says "given the prime location in the plaza district, the proximity to Trump Tower and the high profile tenant, we use the same four percent cap rate as Trump Tower." Do you see that note?
Yes.
Q Do you recall Mr. McConney asking you to come up with additional reasoning to justify using the four percent cap rate for Niketown in the 2020 Statement of Financial Condition because Mr. Bender was pushing back on using the four percent cap rate?
I don't recall, no.
Q You don't recall that.
If I suggested to you that he made such a request to

you on Christmas Eve of 2020, does that ring a bell?
No.
Q Mr. Flores, were you aware that as part of discovery in this case and in the investigation you received production of voicemail messages that were left on your office phone?
No.
Q Okay.
MR. MER: Your Honor, I'd like to play an audio file which is a voicemail message that Mr. McConney left on Mr. Flores' phone that we marked at PX 397 and then I'll ask you if it refreshes your recollection.
THE COURT: Go ahead.
(Whereupon, there is a pause in the proceedings.)
Q I know you -- he spoke a little quickly. I don't know if you need to play it over again or not, but my question is whether that refreshes your recollection that Mr. McConney left you a message on Christmas Eve Of 2020 asking you to come up with additional reasoning to justify using the four percent cap rate for Niketown?
No, I don't recall that.
Q Okay.
MR. MER: Your Honor, I ask that the voicemail message be admitted into evidence.
THE COURT: Granted. It's in evidence.
(Whereupon, the item previously referred to is

received and marked Plaintiff's Exhibit Number 397 in evidence.)
THE COURT: I don't know how these things work. Is there a transcript of that that will actually be in evidence or just this recording?
MR. MER: We can transcribe it and put that in as an exhibit as well.
THE COURT: Please do.
MR. MER: Okay. We will.
Q Do you recall, Mr. Flores, that in lieu of convincing Mr. Bender to accept the four percent cap rate you and others working on the preparation of the 2020 Statement of Financial Condition used the 20 year cash flow analysis we've been discussing as an alternative method for valuing Niketown in 2020?
I'm sorry, can you repeat the question?
Q Sure. Do you recall -- and we've listened to this voicemail message where Mr. McConney is asking you to come up with additional reasons to justify the four percent cap rate.
Do you recall that in lieu of trying to convince Mr. Bender to accept the four percent cap rate you and others working on the preparation of the 2020 Statement of Financial Condition used the 20 year cash flow analysis we've been discussing as an alternative method for valuing Niketown in 2020?

No, I don't recall.
Q Let's go ahead and put up Plaintiff's Exhibit 3294 in native. This is a draft 20 year cash flow analysis for Niketown for 2020. Do you recall creating this analysis shortly after receiving -- well, shortly after Christmas Eve of 2020?
No, I don't recall that.
MR. MER: Let's go ahead and mark as 3295, the metadata for this spreadsheet.
Q Mr. Flores, this document is a printout of the metadata that was produced along with the spreadsheet we were just looking at. nd if you go down you will see that it says the author is you. Do you see that?
Yes, that's what this says.
Transcript continues on the following page....

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Q nd you will see that the created date is December 28, 2020. Do you see that?
Yes.
MR. MER: Your Honor, I'll represent, and the Court can take judicial notice, that the very first business day after Christmas Eve in 2020, which fell on a Thursday, is Monday, the 28th of December.
THE COURT: I'll assume that's correct.
Q So this metadata shows that the very first business day after Mr. McConney left you the voicemail message that we listened to, there is a 20-year cash flow analysis that the metadata indicates was created by you on that date, the 28th. Do you see that?
That's what the document says.
Q Does this refresh your recollection, Mr. Flores, that you prepared the 20-year cash flow analysis that we've marked as Plaintiff's Exhibit 3294 shortly after Christmas Eve as an alternative valuation method for Niketown because Mr. Bender was pushing back on using a cap rate of four percent?
No, it doesn't.
Q So you have no recollection of doing this work based on a Christmas Eve 2020 voicemail message less than three years ago today, correct?
Correct.
Q Just to close the loop, let's compare the MPV value on

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the spreadsheet that we were looking at.
MR. MER: If we could put that back up.
Q You'll see the MPV value in Row 14 is $252,779,805?
Correct.
Q nd again, this is the spreadsheet that has the metadata that says you are the author of this document based on what we were looking at, right?
That's correct. Correct.
Q nd let's put up next to this the final 2020 Jeff Supporting Data spreadsheet that is Exhibit 857 in evidence and let's go to Row 86 where Niketown starts and then if you go to Row 106, which has the value that is attributed to you, same value that's in the spreadsheet -- sorry. The analysis that the metadata says you created on December 28, 2020, correct?
Yes.
Q Mr. Flores, having looked at a number of 20-year discounted cash flow spreadsheets for Niketown, the metadata for one of those spreadsheets identifying you as the author, the Jeff Supporting Data spreadsheets attributing the spreadsheets to you and the voicemail message that Mr. McConney left for you on Christmas Eve in 2020 asking for your assistance, is your recollection now refreshed that less than three years ago, you created a 20-year cash flow analysis for Niketown to be used to value the property in 2020 for Mr. Trump's Statement of Financial Condition?

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No, it's not refreshed.
Q In terms of the statements that you worked on preparing, I believe you previously testified that you believed you worked on the statement as of June 30, 2020, but that you didn't recall if you also worked on preparing the Statement of Financial Condition as of 6/30/21 before you left the company in March of 2022. Did I get that right?
Yes, that's correct.
Q Let me see if I could refresh your recollection. We did receive in production along with an audio file of a phone message that Mr. Birney left for you some metadata attached to that audio file, all of which gets produced in something called a Cellebrite file.
MR. MER: So I would like to mark as Plaintiff's Exhibit 3300 which I'm going to hand to the witness a report generated by the metadata from Cellebrite file.
Q I may have misspoke, but this is a message that was left for Patrick Birney, not by him, and based on Plaintiff's Exhibit 3300, which is the report for the audio message, it says that the message was left on ugust 2nd of 2021 and it has the phone number of the message of the phone that was calling, leaving the message, and you'll see it is (212) 715-7282. That's your office number, isn't it?
It was, yes.
Q nd you'll see it's a 27-second message that is being

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retrieved from the phone of Mr. Birney?
MR. MER: Your Honor, I'd like to have this document 3300, admitted into evidence.
THE COURT: Granted. It is in .
(Whereupon, the udio recording was marked in evidence as Plaintiff's Exhibit 3300.)
MR. KISE: For what purpose, Your Honor?
THE COURT: Mr. mer, you can say it better than I can.
MR. MER: We are going to play the message. This tells us who the message is coming from and the date of the message.
MR. KISE: Okay. ll of these are being used, though, to refresh recollection. Is there some purpose that the hearsay itself is coming into evidence, the same is true as the other message.
MR. MER: I did not admit them for a limited purpose Your, Honor. I admitted them into evidence because they're all admissible for all purposes. They are party admissions against interest.
THE COURT: Well, I don't know what this new one will show, but the last one was relevant to how things were playing out there, simply put.
MR. MER: Is it in evidence?
THE COURT: The metadata?

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MR. KISE: We haven't heard it yet.
MR. MER: No.
THE COURT: We could wait --
MR. MER: It was this report admitted in evidence. Now, we are going to play the message.
THE COURT: If we haven't heard the metadata, we don't -- if we haven't heard the -- what you're going to play, I don't know whether the metadata is relevant. So why don't we wait until we hear.
MR. MER: Okay.
Q Let's go ahead and play the voicemail message that was left from your phone number.
(Whereupon, the audio recording was played.)
MR. MER: Do we need to hear it one more time?
THE COURT: No, I don't. nybody else does?
Q That was your voice, Mr. Flores, was it not?
Yes.
THE COURT: They're both in evidence now.
MR. MER: Thank you, Your Honor.
Q You were leaving a message for Mr. Birney saying that Eric had asked you to reach out to him about preparation of the financial statement, correct?
Correct.
Q nd that Eric was Eric Trump, right?
Yes.

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Q nd this is a phone message you were leaving for Mr. Birney in mid 2021, right?
That's what the metadata says.
Q nd does the fact that Eric Trump touched base with you in mid 2021 about having you work on the preparation of the financial statement refresh your recollection that you indeed were involved in the preparation of the 2021 Statement of Financial Condition?
I could have been. I don't recall.
Q No doubt, though, that that was your voice --
Yes.
Q -- leaving that message for Mr. Birney, correct?
Correct.
MR. KISE: So Your Honor, just to clarify, I guess this is where I'm not stating it correctly. Is this message and the subsequent -- or the prior message being introduced to establish that Mr. Flores doesn't actually remember what took place? Is it being introduced to establish that it, in fact, took place? I'm just -- I think those are two very different things. If the government is trying to establish that Mr. Flores doesn't remember something that happened, because that's what the questions are.
THE COURT: I'm sure that's not the reason; am I correct?
MR. KISE: That's all the questions are. "Does

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this refresh your recollection." He says no and now it is in evidence for all purposes at least according to them and I'm just wondering how that can be because that's not really consistent with the line of questioning. If they're introducing hearsay to -- well, if they're introducing hearsay evidence to prove the truth of the matter asserted and not meaning the substance of the communication, not to establish either that this witness doesn't remember or not to establish that a conversation may or may not have taken place. Those are just two very different things.
MR. MER: It is absolutely being offered into evidence and has been in my view admitted into evidence to prove the truth of the matters asserted which is that what is stated in both messages is a correct statement of what was going on at the time. The fact that he doesn't remember, it is also something that's very interesting and pertinent, but it is not the sole basis for wanting to get those into evidence.
THE COURT: Probably not the main basis, but in any event, I think Mr. mer adopted my phraseology what was going on. I want to know who was talking to whom about what in terms of these financial statements, who was communicating with whom about what numbers were going to be put in place. Is that a fair statement?
MR. MER: Yes, absolutely, Your Honor.

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MR. KISE: Then with respect to the -- this statement since Mr. Flores accurately acknowledged that it was his voice on the message and, in fact, he has no reason to doubt it, then the foundation has been laid. With respect to the McConney message, which the witness doesn't remember and doesn't recall, you would need Mr. McConney here to say, yes, in fact, I left that message unless this witness can say he did leave the message. This witness can't get in a hearsay statement even if it is an admission by a party.
THE COURT: Even if it is an admission by a party? That's classic --
MR. KISE: But we don't know whether it is or not unless someone has authenticated it for that purpose.
MR. MER: Do you need me to respond? It is a voicemail message produced in discovery by the defendants. Mr. McConney is a defendant in this case. It is an admission against interest, clear, classic traditional to the hearsay rule.
MR. KISE: I don't know why it is being admitted other than that he called Mr. Flores.
MR. MER: I think it is admitting quite a bit and that's for argument.
MR. KISE: I'll leave it there.
THE COURT: It is in evidence for the "quite a

bit."
MR. MER: Thank you, Your Honor.
Q We are now going to move, Mr. Flores, to a different property, Doral. Do you recall from your prior testimony discussing Poer & Company the tax certiorari firm?
Yes.
Q You previously testified that the firm handled property tax assessment appeals in Florida for the Trump Organization, right?
Correct.
Q You mentioned that you worked with that firm in connection with reviewing property tax assessments of Trump Organization properties in Florida, right?
Yes.
MR. MER: I'd like to introduce Plaintiff's Exhibit 3211.
Q You will see that this is an e-mail from Tony Garcia at Poer & Company to you. Do you see that?
Yes.
Q Is Mr. Garcia one of the individuals you interacted with on tax assessment appeal matters that Poer & Company filed on behalf of the Trump Organization?
Yes.
MR. MER: Your Honor, I ask that this be admitted into evidence.

THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3211.)
Q Now, if you look at the e-mail starting with the second sentence of the first full paragraph, he says, "Per our conversation, we will withdraw the RE appeals for lack of supporting evidence."
First of all, do you recall what "RE" stands for in that sentence?
Real estate.
Q Real estate, okay.
Do you have a recollection of having this discussion with Mr. Garcia about the real estate appeals for Doral?
This specific discussion, it seems familiar.
Q nd Mr. Garcia goes on to say, "Our opinion is the property was fairly too favorably assessed as of the 1/1/2020 assessment date." The "YE 2019," we can agree that means year end, the year?
Correct.
Q "The year end 2019 operating statement still supports the county's value as being fair." Do you see that?
Yes.
Q Do you recall what the property appraiser determined was the market value of Doral for 2020?
No, I don't recall.

MR. MER: Let's go ahead and mark Exhibit 3209. Your Honor, this is the official notice of proposed property taxes from the Miami-Dade property appraiser that's available on the government's website and I move that this be admitted into evidence as a business record from a government website.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3209.)
MR. KISE: Your Honor, just briefly. I mean, I'm assuming this is a public record, so that satisfies that basis; but I'm just wondering what's the relevance of this document. Why is this coming in?
THE COURT: I guess we'll find out.
MR. KISE: Okay. Subject to connection.
MR. MER: Indeed.
THE COURT: Okay.
Q If we go down, down the document, you'll see that there's value information column. Keep going. You see it says, "Value information, prior value 2019, current value 2020." There are two columns. Well, multiple columns. There is a market value column and then there are two assessed value columns. Do you see that?
Yes.
Q nd the market value in both years is $78 million,

correct?
Correct.
Q nd that is the market value that Mr. Garcia from Poer & Company was indicating in his e-mail to you as being fair, correct?
I believe so.
Q Let's go ahead now and --
MR. MER: Oh, I think we had your ruling that this is admitted?
THE COURT: Yes.
MR. MER: Okay.
Q Let's go ahead and turn to Mar- -Lago. nd before we talk about Mar- -Lago, I wanted to just put up plaintiff's demonstrative Exhibit 3.10, just so that we can all see the values of Mar- -Lago for the 11-year period in the Statements of Financial Condition.
THE COURT: But before we --
MR. KISE: Before we get there, was that the connection? I'm lost. Was that the connection? We are moving away from this exhibit now. It was offered subject to connection. Maybe I missed the connection.
THE COURT: Well, I think the connection was market value and $78 million.
MR. MER: That's right.
MR. KISE: So this is being offered as the actual

market value of the property in this year, just so I'm clear?

THE COURT: Well, the tax assessor's view and I think Mr. Garcia's view of the market value. That's what it says. Now, Mr. Kise, you can certainly argue that there are different market values, but it is still relevant.

MR. KISE: Okay. Same objection, but thank you, Judge.

Q I just wanted all of us to familiarize ourselves with the values for Mar- -Lago that are in this statements from 2011 to 2021.

Mr. Flores, we heard testimony from Mr. McConney that every year from 2011 to 2021, Mar- -Lago was valued as if it could be sold as a private residence. Do you have an understanding that Mar- -Lago was being valued as a private residence when you were working with others to prepare valuations for the Statements of Financial Condition?

I don't recall, no.

Q Do you have any reason to doubt Mr. McConney's testimony that every year it was being valued as a private residence?

No.

Q Let's go ahead --

MR. KISE: Objection; foundation.

MR. MER: I think there was foundation because the

witness testified he was involved in discussions with others about the preparation of the 2020 Statement of Financial Condition. So he has a foundation for knowing if he has any reason to doubt Mr. McConney's testimony.

MR. KISE: But he testified he doesn't know whether it was valued as a private residence or not.

THE COURT: Well, that's his testimony.

MR. KISE: Right.

THE COURT: It doesn't mean --

MR. KISE: Now, any reason -- I mean, is there any reason to doubt that it is raining outside? If you know, you know. If you can't look out the window, you don't know. This witness doesn't have any basis to know what Mr. McConney was doing or what he testified to or the accuracy of it. It is just sloppy, Your Honor.

MR. MER: Well, I take offense to calling my questions sloppy, but I think it was appropriate. I think the witness said he didn't recall how Mar- -Lago was valued and it is appropriate to ask him if he has any basis to dispute Mr. McConney's testimony.

THE COURT: He doesn't say, "I would have no way of knowing that." He says, "I don't recall." The objection is overruled.

MR. KISE: It would be better if he -- I mean, does he have any understanding one way or the other is the

question? That's the first question. ny reason to doubt? I mean, he's not demonstrated that the witness has any basis to know one way or the other.

THE COURT: Please explain the basis which I think was evident.

MR. MER: The basis is that this witness said he was personally involved with others in the preparation of the 2020 Statement of Financial Condition and I will -- if you will refrain from characterizing my questions in a pejorative way, I will extend you the same courtesy if and when you get to the podium to question witnesses, Mr. Kise.

MR. KISE: But I'm still -- pejoratives aside, just because he was involved in the preparation of the 2020 Statement of Financial Condition, there's literally hundreds of properties. There's all sorts of properties. I mean, the question relates to this one particular property and not even that one particular property, but a particular aspect of that one particular property.

So to say that I'm involved -- that a witness is involved generally in the preparation of the Statements of Financial Condition is very different than saying the witness was involved specifically with respect to this asset and would know specifically Mr. -- have a basis to know one way or the other Mr. McConney's rationale.

THE COURT: Mr. Kise, I think the questions are

perfectly appropriate. There was a basis and the witness said he didn't remember, didn't know. If we're going to have to go through this every time there's some -- you perceive an issue with relevance, we'll be here a lot longer than I think we need to be.

I don't want to stop you from presenting your defense or questioning the plaintiff's case, but gee, save it for something that matters. I don't see that this even matters much less I think you're wrong on the merits. So let's move on.

MR. MER: Thank you, Your Honor.

MR. KISE: Respectfully, Your Honor, it does matter. The rules matter and this witness' knowledge matters. This is a highly-technical case, so all of this collapsing and conflating that has been done throughout the course of their case is inappropriate.

So I am -- respectfully, I'm not trying to take up a lot of time, but I am respectfully going to have to object to that. I understand the Court's position and I will just make my objection and leave it there. Thank you.

THE COURT: Yes, the rules matter at a certain point. I'm just going to say, and maybe the point is now, my ruling is my ruling. I give you some leeway because you know what you're doing and this is an important case and the details do matter, but if I rule rather than you might just

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question whether it really matters, and "I don't know," "I don't remember," "I don't think" really matters.

But anyway, again, a ruling is a ruling and I'll give you some leeway as I have this whole trial, but let's try -- both of us try to be reasonable about this, okay. Let's just move on.

MR. MER: Your Honor, I do have to just make a simple request. In my experience, evidentiary objections are very short and concise. It is the word "objection" and maybe five or six words after that. I have reviewed the transcripts to date and there are any number of instances where Mr. Kise's evidentiary objections go on for pages in the record. nd then when Your Honor rules against Mr. Kise and overrules the objection, it is an invitation for reconsideration and we get another several pages of the same objection.

It does three things. It interrupts the flow of the examination which is unfair. It educates the witness potentially which is improper, and it prolongs the trial. So I'm just going to ask not for a particular ruling now, but I ask that you consider whether it's now time to restrict Mr. Kise when making an evidentiary objection to what is the standard practice, which is very short, concise statement, the word "objection," and a very quick basis of what the objection is.

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THE COURT: Well --

MR. KISE: Most of the time, Your Honor, that's exactly what happens, and then there's a colloquy about why do you think -- you asked Mr. mer how about it. You ask me to explain. I mean, this is part of the give and take. It is a bench trial. I'm not sure what Mr. mer's experience is and I'm not going to get into pejoratives, but I have to make our record.

If they are now asking -- they're now asking that the defense not even be allowed to make its case. They're asking that the defense not be allowed to make objections. They're asking that the defense not be able to make its case. Why don't we just skip over the part where there is a trial and just move to the ruling because that's what they want to do? That's clearly what they want to do.

That's where they began this case from the beginning. That's what they're used to in the ttorney General's office, bullying people in examinations under oath and now we are in open court, in an open trial, in a highly-publicized case and now they're asking that the lawyers not even be able to make sure arguments.

I think it's highly improper for them to even make the request. Your Honor has done a very good job of navigating and negotiating between the lawyers as to their objections. They have done many similar things and so I would just say it is a bench trial. We'll just move on. I understand the Court's direction and as always, I take it under advisement.

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THE COURT: Thank you. I won't make any such broad ruling at this point.

Mr. Kise, obviously you're free to object, but keep in mind the point about the deleterious effects of long speeches, speaking objections.

nd by the way, Mr. mer, compared to most judges, I probably do allow and actually seek more of an explanation on objections. In fact, I often turn to the defense side and say "what's the ground." But again, we will all try to use commonsense here and let's move on.

MR. MER: I appreciate, Your Honor.

Q Let's look at Exhibit 3214. This is an e-mail from Mr. Garcia of Poer & Company to you, cc'd to Mr. Corbiciero on November 13th, 2020, correct?

Yes.

Q nd you'll see that the second sentence refers to Mr. Garcia getting calls from the media about the appeals for Mar- -Lago and Doral. Do you see that?

Yes.

Q Did Poer & Company file an appeal for the 2020 tax assessment for Mar- -Lago on behalf of the Trump Organization?

I don't recall.

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MR. MER: Your Honor, I move this into evidence.

THE COURT: Granted.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3214.)

(Continued on the next page.)

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Q Let's go ahead and mark Plaintiff's Exhibit 3170. These are a series of petitions and other materials that were provided to us by the Valuation -- by the Value djustment Board. If you go to the second page you'll see that there is on the bottom the certification from the Board of County Commissioners and that same certification appears on the bottom of page two, the bottom of page four, the bottom of page five, the bottom of page six, and the bottom of page seven, establishing that this is the county's official records.

MR. MER: I move this into evidence, Your Honor, under the business exception -- business records exception to the hearsay rule.

THE COURT: Isn't it more specific than business record exception, public document exception, something like that? Where is Mr. Robert now that we need him? He's our CPLR expert. It's in evidence. I'll just save time. Let's move on.

MR. MER: Thank you, Your Honor.

THE COURT: Tell him I said so.

Q Let's look at the first page of this exhibit. You'll see that this is the petition to request a hearing and you'll see that it's being filed by Mr. Corbiciero. He's the representative and it's on behalf of Mar- -Lago Club, Inc. Do you see that?

Yes.

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Q So this is the appeal that was filed, request for a hearing of the tax assessment for the 202 year; correct?

I believe so, yes.

Q Did you review this petition before Mr. Corbiciero filed it with the county?

I don't believe so.

Q To your knowledge did anybody review it -- anyone from the Trump Organization review it before Mr. Corbiciero filed it with the Value djustment Board?

I don't believe so, no.

Q You don't have any reason, do you, to believe that Mr. Corbiciero would file this petition without appropriate authorization from the Trump Organization; is that right?

Correct.

Q Now, if we go down to the petition you'll see -- too far -- you'll see there is a section that says "type of property." Do you see that?

Yes.

Q nd can you tell us the type of property Mr. Corbiciero checked for Mar- -Lago?

Says "commercial."

Q So he's in an official filing with the Valuation Board denoting Mar- -Lago as a commercial property; correct?

Correct.

Q nd that's consistent with your understanding of what

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Mar- -Lago was; right? It was a commercial property being used as a social club; right?

Correct.

Q nd there were boxes that would have permitted Mr. Corbiciero to indicate that the property was residential; right? There is a box next to "type of property" that says "RES one to four units" and "RES five plus units;" right?

Correct.

Q So he could have designated it as a residential property if he checked those boxes, but he did not; right?

That's correct.

Q Okay. nd so if we go to the last page of the document you'll see this is a withdrawal petition. Do you recall that the petition appealing the assessment was withdrawn?

Yes, I believe so.

Q nd the reason for the withdrawal if you go down a little bit there is a box checked, says "the petitioner agrees with the determination of the property appraiser or tax collector." Do you see that?

Yes.

Q nd so was it your understanding that the appeal was withdrawn because the Trump Organization agreed with the determination of the property appraiser?

Yes.

Q nd that determination was based on Mar- -Lago being

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categorized as a commercial property; correct?

Yes.

Q Let's go ahead and look at Plaintiff's Exhibit 1382. You'll see the e-mail that begins in the middle of the page is from Mr. Corbiciero to you copied to Mr. Garcia dated November 17, 2021 and the subject is "Mar- -Lago Homestead Exemption." Do you see that?

Yes.

Q Now you go ahead and pass along Mr. Corbiciero's e-mail to Eric Trump and llen Weisselberg in the e-mail above; right?

That's what the document says, yes.

Q Do you recall reading Mr. Corbiciero's e-mail before you passed it on to your boss Eric Trump and Mr. Corbiciero?

No, I don't recall.

Q Can we agree that you would have reviewed the e-mail before passing it along to your boss Eric Trump and Mr. Weisselberg?

Yes.

Q nd you ask and you tell them that they should let you know if they would like to discuss further; right?

Yes.

Q So can we agree that at the time you passed along Mr. Corbiciero's e-mail about the homestead exemption you were prepared to discuss it with them if they so chose?

Yes.

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MR. MER: Your Honor, I move to admit this exhibit into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3170 in evidence.)
Q Let's look at the second sentence in this e-mail from Mr. Corbiciero. He says "last year we briefly discussed the possibility of filing for a homestead exemption on the Mar- -Lago property since President Donald Trump had legally declared Palm Beach and the Mar- -Lago property as his permanent residence." Do you see that?
Yes.
Q Do you have any reason to doubt that you did in fact discuss this possibility with Mr. Corbiciero the prior year?
No.
Q Let's look at the second paragraph.
"In order to do this Mr. Trump would have to do certain things to establish residency" and I'm going to -- it says "since the private club is currently owned by a corporation, the property ownership would need to be changed/transferred into his name as an individual and not under a corporation."
Do you recall being aware of that point that Mr. Corbiciero was mentioning?
I believe so, yes.

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Q nd he goes on to say "if he was to meet all these requirements then the part of the property that he uses as a residence would be eligible for homestead. The property appraiser would need to come out and do a property inspection and measure the residential area and that portion of the assessment would receive the homestead exemption."
You understood what he was explaining to you when you received this e-mail; correct?
I believe so.
Q nd let's look at the next paragraph.
"Currently, this property is assessed as a private club with the current assessed value at $359 per square foot. The surrounding residential properties are assessed on average of over 2,000 per square foot with a recent sale with just 3,000 per square foot. If the property appraiser were to separately assess the residential portion of Mar- -Lago in order for it to qualify for homestead, we believe this would result in a much higher assessment and therefore outweigh the potential tax savings from the $50,000 homestead exemption in the immediate future. Please let us know if you have any questions or concerns."
Mr. Flores, did you understand from this e-mail from the company's tax advisor that Mar- -Lago was currently assessed as a private club and not a private residence?
Yes.

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Q nd did you understand, sir, that as a result of being assessed as a private club and not a private residence, it was assessed at a much lower price per square foot?
That's what the e-mail says. I don't recall.
Q nd that's what you were to understood when you received this e-mail and read it?
Correct.
MR. MER: Your Honor, the Court can check my math, but based on the numbers in Mr. Corbiciero's e-mail and going off of the $3,000 per square foot figure, private residences are assessed at almost eight and a half times the price of a private club based on just the math and I think the Court can take judicial notice of the math.
THE WITNESS: I'll take judicial notice subject to any contradictory views.
Q nd you understood that Mr. Corbiciero was saying it's not worth the $50,000 homestead exemption because of the increase in the assessment of the residential portion of Mar- -Lago were that to be carved out and designated at a private residence; right?
Correct.
Q nd that's because private residences are assessed at a much higher rate than a private club; correct?
That's what the --
MR. KISE: Objection. Foundation.

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MR. MER: He received this e-mail, Your Honor.
THE COURT: Let's ask. I think the question was basically do you understand it that way and he says that's what the e-mail says.
Mr. Flores, aside from the fact that's what the e-mail said, is that what you understood, which is what the question was?
THE WITNESS: I don't know.
Q But isn't that what you would have understood from reading this e-mail?
Yes, that's what this e-mail says.
MR. KISE: That's an entirely different question.
MR. MER: I'm happy with the question I asked and the answer I got.
THE COURT: nd any objection overruled.
Q Did Eric Trump or llen Weisselberg ever get back to you to discuss this e-mail further?
Not that I recall.
Q To your knowledge, did Donald J. Trump ever apply for the homestead exemption?
Not that I recall.
THE COURT: Five-minute warning.
Q When you participated in the preparation of the Statement of Financial Condition, do you recall that Mar- -Lago continued to be valued as a private residence while being taxed

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as a commercial property?
No.
Q You don't know one way or the other?
No.
Q We can agree that in 2020 it was being taxed as a commercial property based on what Mr. Corbiciero had designated the property as in the petition; correct?
Correct.
Q You mention that your job entailed conducting financial analyses on real estate investments, including new acquisitions and development opportunities; is that right?
Correct.
Q nd in connection with doing that work, you were required to analyze future cash flows; correct?
Correct.
Q nd we've looked at some examples of discounted cash flow analyses you prepared over the years at the direction of Mr. Orowitz and Eric Trump; correct?
Correct.
Q nd so that is a type of analysis that is discounting cash flows to present value that you knew how to do as part of your job at the Trump Organization; right?
Yes.
Q nd you shared some of your discounted cash flow analyses with Mr. Weisselberg?

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Yes.
Q nd you shared some of your discounted cash flow analyses with Mr. McConney; correct?
Yes.
MR. MER: Let's go ahead and put up the 2020 Jeff Supporting Data spreadsheet, which is Exhibit 1352, native. If we could go to rows 311 to 316.
Q You'll see that they calculate the profit for the sale of 71 mid rise units approved but put on hold and it comes to over $90 million in 2020 and over $86 million for 2021. Do you see that?
Yes, that's what the -- that's what the document says.
Q In connection with your work on the Statement of Financial Condition were you asked to review the assumptions for the portion of the valuation of this asset that involves the sale of 71 mid rise units?
What is this asset?
Q This asset is Briarcliff.
Then, no, I don't believe so.
Q Did anyone ever ask for your input on whether the profit attributable to the sale of these 71 units should be discounted to present value?
No.
Q Let's turn to Row 453, which begins "the valuation for the L golf course." nd if we look at Row 475 to 492 you'll

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see it indicates on Row 480 23 lots are being valued at roughly $63 million. Do you see that? ctually, it's for 2021.
nd if you go down to Row 490, the same 23 lots are being valued at about 53 million for 2020. Do you see that?
Yes.
Q Did any of the individuals you identified as working with you on the preparation of the Statement of Financial Condition ask you to perform -- ask you to review the assumptions involved in the sale of the 23 lots for this asset?
No.
Q Did any of the individuals you identified as working with you on the preparation of the Statement of Financial Condition ask you to perform a discounted cash flow analysis for the sale of these 23 lots?
No.
Q Did any of them ask for your input on whether the profit from these lot sales should be discounted to present value?
Not that I recall.
Q Mr. Flores, would you agree that future cash flows need to be discounted to present value?
Yes.
MR. MER: That's all I have, Your Honor.
THE COURT: That's it for this witness?
MR. MER: Right on schedule.

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THE COURT: ny cross examination at this time? No? Okay. The witness is excused. I'll ask again that the defense side check in to whether Friday is a possibility as an all day under the assumption that we could finish it in one day, and we'll come back at 11:35.
(Whereupon, the witness is excused from the witness stand and there is a recess in the proceedings.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
THE COURT: Would plaintiff like to call her, their, its next witness?
MR. MER: I do have one quick housekeeping matter.
THE COURT: Okay.
MR. MER: Just about an exhibit. I showed Mr. Flores it was Exhibit 1352. That was the 2021 supporting data spreadsheet. I mistakenly believe it had been admitted into evidence, but it's the Whitley Penn document that was admitted whereas the one I showed Mr. Flores was the one produced by the Trump Organization, so I think for the sake of good order we should just get the one I used with the witness admitted and, again, that's Plaintiff's Exhibit 1352.
THE COURT: Granted. You'll just make sure it happens. Okay.
MR. G BER: People call David Cerron.

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THE COURT OFFICER: Witness entering.
(Whereupon, the witness enters the courtroom and approaches the witness stand.)
THE COURT: I thank the court officers for their alacrity.
THE COURT OFFICER: Remain standing and raise your right hand.
Do you solemnly swear or affirm any testimony you give will be the truth the whole truth and nothing but the truth?
D V I D C E R R O N, called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:
THE WITNESS: I do.
THE COURT OFFICER: Please state your name and either business or home address on the record.
THE WITNESS: My name is David Cerron. Business address 830 Fifth venue, New York, New York 10065.
THE COURT: Okay. Counselor, please proceed.
DIRECT EX MIN TION
BY MR. G BER:
Q Good morning, Mr. Cerron. Can you please state your employer and title for the record?
My employer is the City of New York. I work for the New York City Department of Parks and Recreation. I am the

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assistant commissioner for business development and special events.
Q nd until recently, New York Department of Parks and Recreation had a concession agreement with the Trump Organization; is that correct?
That's correct.
Q Could you give me some of your professional background within the Parks Department, please?
Sure. I've had the privilege of working for Parks in the city for just over 21 years. I started there working in our citywide services office, so that was doing a variety of different programs with our parks enforcement; with the Green Thumb Organization, which is community gardening; with arts and antiquities, variety of different operations there.
I moved -- I worked in public programs, which does all the recreation centers in the city and I had a chance to work on their after-school programming and other different events and I've worked in our transitional job programming, parks opportunity program and with the concessions team and have been there since about 2007, 2008.
Q nd can you tell me at a high level what your role has been as a member of Parks and Recreation with respect to the Ferry Point Golf Course?
So my role has been to work with colleagues in the concessions division on contract administration. So contract

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administration is effectively the oversight of the terms of the contract. So we'll focus on things related to operations, you know, is the operation -- and in this case Ferry Point.
Is it open to the public seven days a week; when does the day start, when does the day end; are we sure that it's being operated that time; when does the season end for most of our golf courses, effectively all of them.
They have a season, so the weather has changed, but they could be open until September or October, sometimes later and then they'll kind of start a new season in the spring.
We'll go over reports that are due to us. We want to make sure they have insurance. We want to make sure they're charging the right rates if rates go up, which they tend to. We want to review those rates and we have to approve them, so those sorts of things.
Q nd at what point in the history of the concession agreement for Trump Ferry Point did you become directly involved in the --
I became involved once the license was registered by the New York City Comptroller's Office and the agency had issued a notice to proceed. So that was when the contract commenced in I believe it was like the spring of 2015.
Q Were you in the office, though, during the period when the request for offers was issued and being considered?
I was.

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Q nd did you have familiarity with that process?
I was -- you know, I was there during that process and certainly remember, you know, colleagues talking about it. I was not involved in the selection.
Q Not formally involved?
Not formally involved.
Q Can you describe what a request for offers is in terms of city procurement? Your understanding?
So it's an -- it's under the other procedures under the city's Franchise and Concession Review Committee rules, so that's the -- for short, the FCRC is the acronym that we use.
Typically, when the city does its solicitation to have an operator provide a public service that includes fees we would use two methods: request for proposals, an RFP, or request for bid, an RFB. Generally those are going to be the methods that we'll use. There are instances where we will use either a sole source where there is no competitive process and we go through a process instead to award it directly to one operator. We can just -- this operator is uniquely qualified to provide that service and that, you know, the deal offered to the city is sufficient for that justification.
nd then in other circumstances we'll go through another process. nd this RFO, requests for offers, is part of the other process and to the best of my recollection this is the only time that the agency has done an RFO.

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MR. KISE: Your Honor, just -- very briefly just so we avoid interruptions. One thing I notice on the record, it's f-e-r-r-y, not f-a-i-r-y. nd the other is that I just want to have a standing objection so we can avoid on statute of limitations and relevance to this line of questioning, this testimony for this witness. Thank you.

THE COURT: We certainly want to get the spelling correct and the objections are considered standing and overruled.

Q Can you give me some background maybe about the -- before we get further into the request for offers, some background about the genesis of the Ferry Point Park Golf Course?

So the Ferry Point site, the scenario before it was a golf course was a municipal landfill and this was something that when I was working with the city under the Bloomberg administration was a priority for the agency to convert this landfill into a golf course and that was something that, you know, the city had attempted to do through a private operator. We had issued other RFPs and solicitations to try and achieve that goal and ultimately were not able to. So the city invested, you know, approximately $120 million, I think, over that in order to, you know, design and construct the golf course.

MR. G BER: So at this point I'd like to bring up

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Plaintiff's Exhibit 3289 for identification.

Q So Mr. Cerron, there is some addition. It was publicly filed in a different legal proceeding, but the document in chief begins on page two of four of this exhibit and I just ask that once you've had a chance to take a look at it to let me know if you recognize this document.

Yes. This is a pre-solicitation review, what we call a PSR, and this is part of the documentation that we have to submit to the mayor's office of contract services before we can formally issue a solicitation, in this case, the RFO.

MR. G BER: I'd ask this be moved into evidence.

THE COURT: Granted. It's in.

MS. HERN NDEZ: Objection. Statute of limitations.

THE COURT: Standing objection overruled. It's understood.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3289 in evidence.)

Q nd Mr. Cerron, could I ask you to describe your understanding from this document of the selection procedure that's being outlined here?

So, the selection procedure is along the lines of what we had just discussed a few minutes ago. It is neither a competitive sealed bid, which is an RFB or competitive sealed proposal, which is an RFP. We did a different procedure that

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was not a sole source, so this was the other -- and in this case the other was the RFO.

Transcript continues on the following page.....

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Q So this would be followed by your request for offers?

Correct.

MR. G BER: I ask to bring up Plaintiff's 3290 for identification.

Q gain Mr. Cerron, once you've had a chance to review this document, can you, please, tell me if you recognize this document?

This is the RFO document that was issued after the approval of the PSR that we just discussed.

MR. G BER: I'd ask this be moved into evidence.

MS. HERN NDEZ: Objection. Statute of limitations.

THE COURT: Overruled. It's in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3290.)

Q Mr. Cerron, I'd like to direct your attention on page two of this document, the underlined header, "Goals for Request for Offers." Starting at the end of the second line, "Parks is seeking innovative offers from entities that can demonstrate substantial experience in the operation of golf courses and management of large scale events and significant financial capability to operate and maintain this concession at the highest level."

So can you, I suppose, tell me your understanding of the goals of this RFO based on this language here?

Yeah. The agency was seeking an operator that had

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experience and I think that can be interpreted in a few ways, but mainly operation of a golf course and a golf course that had hosted, you know, major tournaments from the PG or LPG and then have an entity that has the financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary.

Q Can you turn to page 3 of 8 under, "Content of offers," item number five, it says, "Financial capability, including financial statements and other supporting documentation of the responder's financial worth."

Is that what you were just referring to I think in terms of the wherewithal to operate the concession?

Yes.

Q nd then moving forward to page seven of the document, and we'll go between seven and eight. So there's here, it discusses scoring, I believe in the document, of the offers that are received; is that correct?

If you could scroll I guess -- scroll down a little, so I can -- or the other way. Sorry. Okay. "The conditions based on the following criteria," is that the --

Q Yes, "conditions based on the following criteria." Do you understand that to be the criteria on which offers would be scored?

Yes.

Q nd you see there it says, "Financial ranking, ten

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percent financial capability." Can you, I guess, provide your understanding of how financial capability would be scored in a request for offer such as this?

So this is -- this is a category that, you know, we would look for documentation verifying someone's finances to move forward with the commitments that they're making in their offer.

You know, there's a number of different documents that we would -- could review depending on what someone provides. It could be tax returns. It could be bank statements. It could be financial statements. It could be attestation letters. It is a variety of different things.

Q I think you said this a little bit before, but can you explain Parks' interest in ensuring that an offerer has sufficient financial capability?

Well, I think generally for any project that we want to do, we want to work with someone that we're sure has the money or the financing to be able to deliver on what will be obligations under the contract and I think specifically given this -- the history of this course and the fact that we ended up doing an RFO, I think the city was even more focused because this was a tough one to get -- to get accomplished and to actually complete.

Q Can you elaborate what you mean by "tough one to accomplish"?

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s I mentioned, we had tried a handful of times through an RFP to find an operator for this course and to have someone else perhaps help with the construction or do the construction. The city ended up investigating over $120 million and there was a certainly a sense of importance placed on making sure that this course was open and available to the public. nd in doing so, we wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day.

Q Do you have a sense of how many offers were submitted in response to this RFO?

My recollection is that there were four offers.

MR. G BER: I'm going to now pass up PX 1331 for identification.

Q Mr. Cerron, please let me know if you recognize this document once you've had a chance to read it.

(Witness reviewing document.)

This is the response to the RFO from the Trump Organization.

MR. G BER: I'd ask this document be moved into evidence.

MS. HERN NDEZ: Objection. Statute of limitations.

THE COURT: Overruled. It is in evidence.

(Whereupon, the Document was marked in evidence as

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Plaintiff's Exhibit 1331.)

Q Mr. Cerron, if I could point you to page four of this document, heading "F, financial capability." It says, "We have enclosed a statement from the certified public accounting firm of Weiser, L.L.P. indicating a net worth in excess of $3 billion and cash on hand in excess of $200 million. s such, we will easily be able to meet any and all financial obligations under this contract."

Just to move to page seven of the document, there's a letter here from Weiser L.L.P. that I think says substantially the same. So Mr. Cerron, is this the type of documentation of financial capability that the city would use in considering offers submitted to it?

Yes.

Q nd the city did consider this letter in reviewing the request for offers?

I believe so.

MS. HERN NDEZ: Objection; foundation.

THE COURT: Do you want him to ask if he knows?

MS. HERN NDEZ: He already testified that he was not involved in the bid process.

MR. G BER: I believe he testified that he was not formally involved, but he had an understanding of process both generally as a Parks employee familiarity, but also specifically in discussions with colleagues. I can ask him

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what his understanding is or if he knows whether --
THE COURT: Let's start with does he know and then what is his understanding.
Q Mr. Cerron, do you know if this document was considered as part of the offer from the Trump Organization?
I believe it was.
MR. G BER: t this time, I'd like to hand up this document Plaintiff's Exhibit 3291. It is entitled, "Recommendation for ward of Concession greement, Responsibility Determination."
Q Mr. Cerron, let me know if you recognize this document, please.
Yes, I recognize it.
Q What is this document?
This is the request for award. This is what we refer to as an RF and this is part of the documentation that we have to provide to the mayor's office of contract services to formalize the award of a license agreement.
Q So if you look there, there's a box here. It says, "This is to certify that I have determined that the subject concessionaire has the capability in all respects to perform fully the concession requirements and the business integrity to justify the private use of city-owned property and is, therefore, responsible." nd it appears to be signed by Elizabeth W. Smith, ssistant Commissioner for Revenue and

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Marketing.
So Mr. Cerron, does this certification mean that NYC Parks is recommending that Trump Ferry Point, LLC be awarded the concession?
Yes.
Q So if we go down to the second -- page three of the document, under the header, "Financial Resources, dequate and ccounting Procedures", the document says here, "Trump has provided Parks with documentation from WeiserMazars, LLP, certified public accountants, stating that Donald J. Trump, the president of Trump, has a substantial net worth and cash position as set forth in Exhibit V to the concession agreement. There is also a personal guaranty from Donald J. Trump regarding payment obligations and the completion of capital improvements. Trump's offer includes setting aside three percent of gross receipts towards a capital reserve fund in years 5 through 12 and two percent in years 13 through 15 of the term of the concession agreement."
Mr. Cerron, can you explain your understanding of this paragraph here and how it relates to the recommendation?
So this part of the -- this part of recommendation is kind of just verifying to the mayor's office that we believe that this elected operator has the financial resources, the wherewithal and organization to competently run this concession.
Q Could I ask you why did the city need to see, I guess,

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a demonstration of assets of Donald J. Trump in order to grant the concession to Trump Ferry Point, LLC?
I mean, in terms of why they needed to see it, this was part of the financial capability section. nd as I had mentioned, this was a course that the city wanted to open for quite some time and we wanted to be sure as we would always that the operator in place had the funds to deliver on their obligations under the license.
Q I think -- let me rephrase my question. The concessionaire here formally is Trump Ferry Point, LLC. The paragraph here is referring to the net worth and cash position of Donald J. Trump personally.
Do you understand why the recommendation for award here is interested in Mr. Trump's personal financial position and not that of the entity?
Well, in his personal position, it relates to the personal guaranty from Mr. Trump, which was to I think -- again, very important and helpful in helping the city feel comfortable that all of the obligations were indeed going to be met.
Q The next two headers, I just like to briefly ask you about. They are "business integrity" and "other sources of responsibility information." Can you just to a high explain what these categories refer to?
This is -- this is a section where the agency will

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look for adverse information. So are there outstanding tax liens due to the state, due to the city? re there outstanding lawsuits going back to a certain period of time? re there other kind of like, you know, workplace violations or other issues that are available on any databases that we would need to identify and discuss before moving forward with an award.
Q So going back to the certification at the -- on page two of this document, at the top of the recommendation, is that -- are those two sections we just looked at responding to, I guess, the discussion of business integrity to justify the private use of city-owned property and is, therefore, responsible. That's what's being --
Yes.
Q -- analyzed there?
Yes.
Q nd so business integrity and responsibility of a concessionaire are important to the city?
Yes.
Q So was it important in recommending the award for Parks & Recreation to receive truthful, accurate and complete information from offerers?
Yes.
Q Based on the submissions here, the offer that we just looked at and the additional determinations described in the recommendation for award, did the city and the Department of

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Parks & Recreation believe that it was receiving truthful, accurate and complete information from the offerers?
Yes.
Q I'm going to hand you a very voluminous exhibit marked Defendant's 981. Let me know if you recognize this document.
This is the license agreement between Trump Ferry Point, LLC and the City of New York.
MR. G BER: I'd ask that this be moved in evidence.
THE COURT: Granted. It is in.
MS. HERN NDEZ: Objection; statute of limitations.
THE COURT: You really don't have to do that every time. It is a standing objection, if that phrase means anything.
Go ahead, Mr. Kise.
MR. KISE: s to the testimony, the standing objection, but the documents, we need to object one by one like we've been doing throughout the trial.
THE COURT: Why is that? Don't the documents always or almost always have the date of them?
MR. KISE: gain, I mean, we -- not to belabor it, but our research has concluded that there's no standing objection with respect to documents, but with respect to testimony, yes, but with respect to document by document, no.
THE COURT: Well, Cliff isn't here, so we can't

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consult him, but I'll assume -- I'll let you do whatever you need to do, okay.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 981.)
MR. G BER: I realize I may not have admitted Plaintiff's 3291. I move to admit 3291, plaintiff's.
MS. HERN NDEZ: Objection. Statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3291.)
Q Can I just quickly -- I just want to direct your attention to pages 103 and 104 of this document. Just to confirm that this is a signed version of a license, so this would be the final agreement between the city or Parks & Recreation and Trump Ferry Point, LLC?
Yes.
Q With respect to the trees that went into printing this out, I'm going to move on to Plaintiff's Exhibit 3283. Let me know if you recognize this document, Mr. Cerron.
Yes. This is the personal guaranty made by Mr. Trump.
Q Is it your understanding that this personal guaranty was a condition of the license that we just looked at?
Yes.
Q If you look, Mr. Cerron, at page eight and nine of this document, you'll see that it is signed by Donald J. Trump as

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guarantor and then there is the signature of Ms. Smith, the ssistant Commissioner of Revenue, correct?
Correct.
Q So I'd like to draw your attention, Mr. Cerron, to page three of this document; heading four there, "Financial Covenants." Well, actually before that, can you just explain your understanding of this guaranty, the personal guaranty here as it relates to what we have been discussing, financial capability and Ferry Point license.
Just generally, that it is -- it's a guaranty to meet the financial obligations of the license. So effectively, that was the biggest part of the obligation was the clubhouse and the concessionaire was obligated to design and construct clubhouse for the golf course and that would also host catered events in the amount minimum of $10 million.
Q So the city or Parks & Recreation asked for a guaranty in order to ensure that the concessionaire would meet those obligations?
Correct.
Q nd so under Section here of heading four, it says, "Until the guaranteed obligations are released or terminated, within 120 days of the end of each calendar year, guarantor shall be required to furnish Parks with a letter from guarantor's accountant stating that there has been no material adverse change in guarantor's net worth (such letter a "No M C"

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letter)."
Can you explain the purpose of these "No M C" letters on an ongoing basis?
That it was an annual letter that was to be sent to the city to just reaffirm that the initial financial statements that were shared with the city during the award process were in material respects the same.
Q nd would you expect those letters to be true, complete and accurate?
Yes.
Q Would submission of false or fraudulent information in those "No M C" letters be a matter of concern to Parks?
Yes.
Q Can you elaborate on that, what type of concern would be raised?
I think, you know, for -- I guess the first concern would be our questioning of whether or not the financial obligations under the license could continue to be met. nd then I think the second concern would be if this was not accurate, are there other documents, other reports that were provided to the city that were also not accurate.
Q s a general matter, does Parks & Recreation have procedures or mechanisms in place for reporting suspected or actual false or fraudulent submissions if you know about them?
If we become aware of something that was reported

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falsely, yes. Generally, that's a matter we would refer to our counsel's office and then potentially to the city's department of investigation.

Q So, Mr. Cerron, I'm just going to ask you before I let you -- before I'm concluded to just take a look at a number of documents and tell me if you recognize them. They're going to look substantially similar. This is Plaintiff's 3282. It is a letter from WeiserMazars dated December 21, 2011. Just let me know if you recognize this document, Mr. Cerron.

this is -- this is an e-mail and then starting on page two is the letter. I'm sorry. It is an e-mail with an attached letter.

This is one of the "No M C" letters that were referenced in the personal guaranty that you just had up.

Q Okay.

MR. G BER: I'd ask that this be moved into evidence.

MS. HERN NDEZ: Objection. Statute of limitations and foundation.

THE COURT: Overruled on statute of limitations. What's the foundation?

MR. G BER: The foundation is -- I can ask a question just to --

THE COURT: Sure.

Q Mr. Cerron, is it your understanding that this letter,

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which I believe you yourself said is the "No M C" letter, was submitted to the city?

Yes.

MR. G BER: I move to admit it.

MS. HERN NDEZ: Objection, Your Honor. He testified he doesn't recognize the first page of the exhibit, only the second page.

MR. G BER: It was produced as a family with the cover e-mail that's an internal Trump Org document. I'm happy to admit only as to the letter at this time just to obviate.

THE COURT: Okay. Then that's what we will do. Just submit it as to the letter.

MR. G BER: lthough, I will note that the e-mail is from Mr. McConney and so to the extent that it's a party admission, perhaps we just seek to have it admitted for all purposes at this point and Mr. Cerron is only testifying as to his knowledge.

THE COURT: It is admitted all pages for all purposes.

MR. G BER: Once again, I think I need to admit 3283 the previous exhibit as well into evidence.

THE COURT: Sorry. Say it again.

MR. G BER: 3283, I may not have moved that in formally. It is the previous.

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THE COURT: ll in for all evidence for all purposes.

(Whereupon, the Documents were marked in evidence as Plaintiff's Exhibits 3282 & 3283.)

MS. HERN NDEZ: Just note our objection. Statute of limitations.

THE COURT: Overruled.

Q Mr. Cerron, first paragraph here, the last sentence refers to -- well, let me start with the whole first paragraph. "We are the accountants for Mr. Donald J. Trump and have previously compiled his Statement of Financial Condition as of June 30, 2011 as indicated in our accountant's compilation report dated October 6, 2011. This compiled financial statement showed a net worth in excess of $4 billion and cash and marketable securities in excess of $250 million."

So Mr. Cerron, would the city expect that representation to be true, complete and accurate?

Yes.

MR. G BER: I would now move on to Plaintiff's Exhibit 3286 for identification.

Q Do you recognize this document, Mr. Cerron?

Yes.

Q Can you tell me what it is?

This was -- this was a proposal from the concessionaire at the time to extend, if memory serves, the 18th

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hole and perhaps the 17th hole into what is now a passive waterfront park that is approximately 19.5 acres.

Q nd this was sent to the Department of Parks & Recreation?

Yes.

Q I direct your attention to page seven of this document. Section F there, "financial capability." "We have enclosed as attachment F a statement from the certified public accounting firm of Weiser, LLP indicating a net worth in excess of approximately $5 billion and cash on hand in excess of $330 million. s such, we will easily be able to meet any and all financial obligations under this extension proposal" and then it is signed at the bottom there, "Donald J. Trump."

MR. G BER: I'd ask this be moved into evidence.

MS. HERN NDEZ: Objection, Your Honor; relevance, statute of limitations and beyond the proffer that we received for this witness.

THE COURT: Would you have done anything differently if you had received their proffer in the sense that it is now being offered?

MS. HERN NDEZ: Yes, Your Honor. We had a deposition on Monday, last Monday of this witness. We would have asked more questions. That was the intention of the proffer.

MR. G BER: How is this beyond the proffer? I

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believe that we had a pretty broad proffer related to the "No M C" letters and the maintenance and administration of the --

MS. HERN NDEZ: This was a proposal for extension, so it doesn't relate to the maintenance of the Ferry Point property.

MR. G BER: But it does contain a letter from Mazars and it reflects the -- contains a letter from Mazars which reflects the financial capability of the guarantor.

MS. HERN NDEZ: The proffer doesn't specifically mention the WeiserMazars letters. It is a little bit different. I don't know how much of this we want to get into in front of the witness, but this is beyond the scope of the proffer we received.

THE COURT: Was it beyond the scope of the proffer?

MR. G BER: We don't believe so.

THE COURT: I don't think so either. Overruled on all three grounds. So it is in for -- the document is in for all purposes. Signed by -- apparently signed by Donald J. Trump.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3286.)

Q So I would just like to have you look at page 21 of the document now, Mr. Cerron. This is a letter from WeiserMazars, LLP dated October 29, 2013. It is addressed to Ms. Smith, the

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assistant commissioner of revenue again. It says, "Dear, Ms. Smith. We are the accountants for Mr. Donald J. Trump and have previously compiled his Statement of Financial Condition as of June 30, 2013. s indicated in our accountants' compilation report dated October 28, 2013, this compiled financial statement showed a net worth in excess of $4,900,000,000 and cash and marketable securities in excess of $330 million."

Mr. Cerron, would the city expect this to be true, complete and accurate representation?

Yes.

(Continued on the next page.)

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Q I'd like to now hand the witness Plaintiff's Exhibit 3284 for identification. gain, this was produced as a family with a cover e-mail, but I'm only going to be asking the witness about page three of three here.

Do you recognize this letter dated March 28, 2016 from WeizerMazars LLP, Mr. Cerron?

Yes.

Q What do you recognize this to be?

No Mac letter.

Q For what year?

For the year ending December 31, 2015.

Q Okay. Thank you.

So this letter states in the second paragraph:

"While we have not reviewed computations of value since the aforementioned June 30, 2015 financial statement, based on discussions with Mr. Trump and his advisors, we are not aware of any matters that would indicate a significant change in Mr. Trump's net worth as of this date or as of December 31, 2015."

Mr. Cerron, the city expects this to be true, complete and accurate as to the representations in this letter?

Yes.

THE COURT: I'll ask the witness to speak a little louder and closer to the microphone, directly in.

THE WITNESS: Sorry. Yes.

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THE COURT: Much better.

MR. G BER: Does it to every witness.

THE COURT: nd usually much earlier, right?

MR. G BER: nd I'd like to move this into evidence, Plaintiff's Exhibit 3284.

THE COURT: Granted. It's in evidence.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3284 in evidence.)

MS. HERN NDEZ: Sorry. Objection also they're only showing the third page of a three-page exhibit. The first two pages he does not have knowledge of and there is no foundation to admit those.

MR. G BER: I said I'm only showing him the third page and that there is an e-mail there that at this point I'm only admitting it as to the --

THE COURT: The third page. Okay. So it's only as to the third page.

Q So Mr. Cerron, I'm going to hand you Plaintiff's Exhibit 3285, and again, this was produced as a family, so I'm only going to be making reference to page two of two of this document at this time.

Do you recognize this document, Mr. Cerron?

Yes. This is a No Mac.

Q I don't think we -- so Mr. Cerron, do you know what

year this No Mac letter is for?
Just a moment. I believe this is for June 30, 2016.
Q The 2016 calendar year?
Or I believe if they have a financial year that ends June 30th.
MR. G BER: Okay. So the second paragraph here, I'd ask that this letter, page two, be moved into evidence.
THE COURT: You ask that it be admitted into evidence? Granted. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3285 in evidence.)
Q This paragraph, second paragraph here, says, "While we have not reviewed computations of value since the aforementioned June 30, 2016 financial statement, based on discussions with the trustees of the Donald J. Trump Revocable Trust dated pril 7, 2014, as amended, and their advisors, we are not aware of any matters that would indicate a significant change in Mr. Trump's net worth as of this date."
Mr. Cerron, would the Department of Parks and Recreation expect this representation to be true, complete and accurate?
Yes.
Q I'm now going to hand you Plaintiff's Exhibit 3280 for identification. gain, this was produced with a transmittal

e-mail, so I'm only going to ask you to look at page two of two. Do you recognize this document, Mr. Cerron?
Yes. This is a No Mac letter for the year ending June 30, 2017.
Q This contains similar language in the second full paragraph as to the last letter I read.
MR. G BER: The -- first, I'd ask this be moved into evidence -- admitted into evidence.
THE COURT: Quick learner. Yes, granted. It's in evidence over an objection.
MS. HERN NDEZ: Just the second page?
THE COURT: Yes, just the second page.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3280 in evidence.)
Q nd so this is -- I believe this is the same language as in the previous letter we read; is that correct? Same or substantially the same?
It seems so, yes.
Q nd would the City and/or Department of Parks and Recreation expect this representation to be true, complete and accurate?
Yes.
Q I'd like to hand the witness Plaintiff's Exhibit 3281 for identification.

Do you recognize this document, Mr. Cerron?
Yes. This is a No Mac letter for the year ending June 30, 2020.
MR. G BER: I'd ask that this be admitted into evidence.
THE COURT: Granted. It's in. Can't object on statute of limitations grounds.
MS. HERN NDEZ: No objection.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3281 in evidence.)
Q So here, this is substantially similar to what we've read. I'll note that the last sentence of the last paragraph says that this compiled financial statement showed a net worth in excess of $3 billion in cash and cash equivalents in excess of $90 million.
Mr. Cerron, would the Department of Parks and Recreation expect the representations in this letter to be true, complete and accurate?
Yes.
MR. G BER: I believe I have no further questions for the witness. Is this in evidence?
THE COURT: It's in.
Will there be any cross examination?
MS. HERN NDEZ: Yes, Your Honor.

THE COURT: I look forward to it.
You know, before you start I have a few quick questions. I won't disturb your situation.
You described the property before it became a golf course as landfill; correct?
THE WITNESS: Correct.
THE COURT: nd can you in one or two sentences describe what material was there? What was the fill?
THE WITNESS: Municipal waste, people's garbage.
THE COURT: Yes. It was what we would call a garbage dump as I remember it from many, many years ago, which might have made turning it into a golf course difficult if it was just grass or sod or something.
nyway, okay. Cross examination. Let's begin.
MS. HERN NDEZ: Your Honor, for the record, my name is Jennifer Hernandez on behalf of the various corporate defendants, our first time officially meeting.
THE COURT: Welcome to Room 300.
MS. HERN NDEZ: Thank you.
CROSS EX MIN TION
BY MS. HERN NDEZ:
Q So Mr. Cerron, you were not involved in the award process to Trump Ferry Point LLC for the Ferry Point property?
Correct.
Q nd you only later became involved in the

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administration of the license when the license was entered into between Trump Ferry Point LLC and the city?
Correct.
Q nd you are aware that the award to Trump Ferry Point was made pursuant to a request for offers process; correct?
Correct.
Q nd that is different from the request for proposal or request for bid process; correct?
Correct.
Q nd in your experience with Parks this is the only time you are aware of a request for offers being utilized in the concessions division for an award process; correct?
Correct.
Q nd so we're going to now pull up PX 3290, which has already been admitted into evidence. nd can you go to the next page?
nd this is the request for offers that you took a look at earlier today; correct, Mr. Cerron?
Correct.
Q nd if we could go to page seven? nd right there in the middle of the page, you see that it says "Selection Committee will evaluate the resulting concession offers and will select or award the entity that proposes the best overall terms and conditions based on the following criteria." Do you see that?

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Yes.
Q nd this selection criteria, similar criterias used in a request for proposal process; correct?
Correct.
Q nd the bulk of the criteria here, 60 percent of it was based on the planned operations and operating experience; correct?
Correct.
Q nd then 15 percent was for the investment and design submitted?
Correct.
Q 15 percent was for the compensation to the city?
Correct.
Q nd then ten percent was for the financial capability of the offer; correct?
Correct.
Q nd that is the lowest percentage of the selection criteria; correct?
Correct.
Q It had the highest importance to the Selection Committee; correct? Sorry. Excuse me. The lowest importance to the Selection Committee; correct?
This was weighted the lowest.
Q nd from your experience with the selection criteria in the request for proposal context the Selection Committee scores

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in accordance with this criteria; correct?
Correct.
Q Thank you.
MS. HERN NDEZ: nd so we're going to now move to PX 3291, which I think it's already been admitted. nd so we could go -- could you go to the next page, Nate?
Q nd so this is the recommendation -- this is the recommendation for -- award for the Trump Ferry Point -- for Trump Ferry Point LLC; correct?
Correct.
Q nd if we can go to the bottom of this page, this is a the technical qualification section; correct?
Correct.
Q nd as we saw in the request for offers, the operating experience of the offer was 30 percent of the selection criteria; correct?
Correct.
Q nd this technical qualification section generally explains why the agency moved forward with an operator; correct?
This is part of why the agency moved forward with the operator, correct.
Q nd that is the experience of the operator in running high-end golf courses; correct?
Correct.
Q nd here, the operator, just to be clear, is Trump

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Ferry Point LLC; correct?
Yes.
MS. HERN NDEZ: nd so if we could move to the next page right where it says "financial resources."
Q nd the financial resources section here is meant to provide as much assurance to Parks as possible that the operator is able to meet the financial commitments under the license; correct?
Correct.
Q nd for this section I believe you testified there is no one-size-fits-all requirement for the type of financial information required?
Correct.
Q Concessionaire to provide a tax return, a bank statement or other documentation to provide financial information to Parks; correct?
Correct, the committee that is reviewing these documents collectively has to decide that they're comfortable with what's been submitted.
Q nd you were not involved in that committee; correct?
Correct.
Q nd so if we could move -- well -- and parties after this recommendation entered into a license agreement; correct?
Correct.
MS. HERN NDEZ: nd so if we could move to D 981,

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which is already in evidence.
Q nd this is the license agreement between Trump Ferry Point LLC and the City of New York Department of Parks and Recreation; correct?
Correct.
Q nd it's for the operation management and maintenance of an "18 hole Jack Nicklaus signature golf course, lighted driving range and ancillary facilities and the design construction operation management and maintenance of a permanent clubhouse at Ferry Point Park;" correct?
Correct.
Q nd we're going to go to page 52 of the License greement. 52, sorry, right. Thank you.
This is the capital improvements portion of the License greement; correct?
Correct.
Q nd here it says: "Licensee shall during the term at its sole cost and expense perform and complete all costs to be performed and completed the capital improvements described conceptually on the schedule capital improvements annexed to" -- "annexed hereto as Exhibit F."
nd if we move forward a little bit, "licensee shall spend or cause to be expended capital improvements costs of at least ten million dollars;" correct?
Yes.

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Q nd so under this section the licensee is Trump Ferry Point LLC; correct?
Correct.
Q nd the most relevant element of the required capital improvement was the clubhouse; correct?
Correct.
Q nd so Trump Ferry Point LLC agreed to spend at least $10 million to construct the clubhouse and any other capital improvements; correct?
Correct.
Q nd did Trump Ferry Point spend at least $10 million on those capital improvements?
Yes.
Q In fact, Trump Ferry Point LLC spent more than $10 million on the capital improvements; correct?
Yes.
Q nd so we're going to go to page 319 of this exhibit now and so this is Exhibit 5, the Guaranty greement; correct?
MR. G BER: Objection. I believe it's Exhibit V just for clarity of the record.
MS. HERN NDEZ: Sorry?
MR. G BER: I believe it's not Roman V. I believe it's Exhibit V.
MS. HERN NDEZ: So that's news to me.
Q So Exhibit V is the Guaranty greement?

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Correct.
Q nd so this is --
MS. HERN NDEZ: Can we go to the next page, Nate?
Q This is a Guaranty greement between Donald J. Trump and the city; correct?
Correct.
Q nd at the end of the page, it says "guaranteed obligations;" correct?
re you referring to --
Q B?
Correct.
Q nd so B is guaranteed obligations. re the obligations under the License greement that Donald J. Trump guaranteed; correct?
Can you repeat that, please?
Q These guaranteed obligations are the obligations that Donald J. Trump guaranteed under the License greement; correct?
Correct.
Q nd so if it's not under this list, under V, he didn't guarantee it; correct?
I believe so. I'd have to take a look at the whole document, but I believe so, yes.
Q We're going to run through some of it now.
So here in romanette i, President Trump guaranteed the payments of all due and unpaid license fees to the city;

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correct?
Correct.
Q nd those yearly license fees were usually in the neighborhood of approximately $300,000 a year; correct?
That's correct with the caveat that the first -- if memory serves, the first five years there were no license fees due.
Q Understood. nd were there any unpaid license fees for Trump Ferry Point LLC?
No, there were not.
Q So the guaranty was never invoked for payment of any license fees; correct?
Correct.
Q nd so we're going to move down to romanette ii now and so under Section 2, President Trump guaranteed any unpaid deposits to the capital reserve fund less any credit Trump Ferry Point was entitled to; correct?
Correct.
Q nd were there ever any unpaid deposits under the license agreement?
No, there were not. gain, just with the caveat as we had discussed during the deposition that there was a credit related to --
Q Correct, which we're going to get to. Thank you.
So the guarantee was never invoked under this section;

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correct?
Correct.
Q nd Section 3, romanette iii, President Trump guaranteed the payment of a one-time design review fee; correct?
Correct.
Q nd was the design review fee paid?
Yes.
Q So the guarantee was never invoked for payment of the design review fee; correct?
Correct.
Q nd moving to --
MS. HERN NDEZ: We're going to put them up together, Nate, Section 4 and 5.
Q nd under Section 4 and 5, President Trump guaranteed any unpaid portion of insurance premiums and deductible under either the license agreement or the development agreement; correct?
Correct.
Q nd was the guarantee ever invoked to pay any unpaid insurance premiums or deductibles?
No.
Q nd then under Section 6, President Trump guaranteed any unpaid grow-in costs beyond the cap of $750,000; correct?
Correct.
Q nd grow-in costs relates to the costs the

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concessionaire takes over for the city to grow and preserve the grass on the golf course?
Correct. This was before the course opened.
Q Right. nd these grow-in costs were capped at $750,000 under the contract from the city and Trump Ferry Point LLC; correct?
Correct.
Q nd anything over the $750,000 cap was reimbursed to Trump Ferry Point LLC through a credit that would apply to license fees in future years; correct?
Correct.
Q nd the city performed an informal review to determine the grow-in costs Trump Ferry Point LLC incurred; correct?
Correct.
Q Do you recall what year that was done?
To the best of my memory it would have been approximately 2015 or 2016. Sorry, sorry. It couldn't have been -- probably 2016 or 2017 because the course opened in 2015 and up until that point the costs would have still been accumulated.
Q Got it. nd so the informal review that the city performed was to see how much Trump Ferry Point LLC expended beyond the cap; correct?
Correct.
Q nd the review showed that Trump Ferry Point LLC

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expended approximately 5 to $7 million more than the $750,000 grow-in cap; correct?
Correct.
Q nd as a result, Trump Ferry Point LLC received a 5 to $7 million credit to any license fees; correct?
Correct.
Q nd --
MR. G BER: I'm just going to briefly object. This is beyond the scope of direct it feels like at this point, so I just want to launch that objection.
MS. HERN NDEZ: It goes to exactly what was guaranteed, Your Honor, and the scope of their agreement and -- with Trump Ferry Point LLC.
THE COURT: Well, I don't think it matters much. They could always call him as their witness, so as a practical matter, overruled.
MS. HERN NDEZ: nd we're trying not to call Mr. Cerron again.
MR. G BER: Under that representation, I will reserve any further scope objections.
Q So the 5 to $7 million credit, did it cover all of the license fees due under the agreements?
I'm sorry. I don't believe I fully understand the question.
Q The 5 to $7 million credit we just discussed did it

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cover all of the license fees that were due under the agreement?
It covered all the license fees that were due under the agreement up until the point that the license was assigned.
Q Correct. So Trump Ferry Point LLC never had to pay any license fees under the agreement; correct?
Correct.
Q nd so moving back to the guarantee, there was no unpaid grow-in costs beyond the cap for President Trump to pay; correct?
There were no fees that were due to the city from this license.
Q nd so President Trump's guaranty was never invoked for -- under this section; correct?
Correct.
THE COURT: Try not to comment on the answer like "right."
MS. HERN NDEZ: Sorry, Your Honor. Understood.
Q So moving to Section 7, President Trump guaranteed payment of any due and unpaid late charges; correct?
Correct.
Q nd were there ever any due or unpaid late charges imposed on Trump Ferry Point LLC?
Not that I recall.
Q Okay. nd then moving to Section 8, President Trump guaranteed any other due and unpaid financial obligations under

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the license agreement or development agreement, which -- and you'll see there at the end "at no time shall exceed $150,000 in the aggregate;" correct?
Correct.
Q nd were there ever any due and unpaid obligations under these agreements?
No.
Q nd then finally on Section 9, President Trump guaranteed the completion of the required capital improvements; correct?
Correct.
Q nd as we discussed, the required capital improvements were completed in accordance with the contract; correct?
Correct.
Q nd so the guaranty was never invoked under this section; correct?
Correct.
Q nd President Trump's guaranty was never invoked under these agreements; correct?
Correct.
Q Because Trump Ferry Point LLC met all of their financial obligations under the contracts; correct?
There was not a need to invoke the personal guaranty.
Q Because Trump Ferry Point LLC met all their --
They were met.

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THE COURT: If you asked that question 20 minutes ago, we could have saved a lot of time. I understand you had a need to go through it all, so.
Q So moving to page three of the guaranty -- or I think we are on page three.
Under Section 4 where it says "financial covenants."
MS. HERN NDEZ: If you could blow that up, Nate.
Q So under the guaranty, President Trump was prior required to furnish a letter from his accountant saying there has been no material adverse change in his net worth; correct?
Correct.
Q nd those are referred to as No M C letters; correct?
Correct.
Q nd there is no requirement that President Trump submit his statements of financial condition to Parks; correct?
I'm sorry. I'm missing that here.
Q I'm asking whether there is any requirement that President Trump submit his Statement of Financial Condition to Parks under the guaranty.
I'm not recalling a provision in the license that required it.
Q nd you've never reviewed President Trump's Statement of Financial Condition in connection with the Ferry Point agreements; correct?
I have not.

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Q nd moving --
MS. HERN NDEZ: Could we pull B up between page three and four?
THE COURT: Five-minute warning.
MS. HERN NDEZ: Thank you, Your Honor.
Q " nd under the guaranty, in the event that guarantor does not finish" -- "furnish," excuse me, No M C letter as required here, Parks' sole remedy is to increase the security deposit;" correct?
Correct.
Q nd the security deposit can -- "in no event" -- looking to the last section, "in no event shall guarantor be required to pay any additional security deposit after the security deposit has been increased to $470,000 pursuant to this Section B regardless of any additional guarantor M C failures; correct?
Correct.
Q So the sole remedy for failure is to submit the No M C letter with an increase of the security deposit to a maximum of $470,000; correct?
Correct.
MS. HERN NDEZ: Your Honor, I think that's a good point to stop.
THE COURT: But you have more after lunch?
MS. HERN NDEZ: Yes, unfortunately.

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THE COURT: Okay. ny progress or responses on the question about Ivanka Trump's testimony on Friday's schedule?
MR. KISE: We're waiting to hear back, Your Honor. Hopefully by the lunch hour. We've been in contact with her. We're working out -- as I mentioned to Mr. Wallace, we're working on a solution.
THE COURT: Great. The witness is excused. I'll direct him not to discuss the case, his testimony or anything related until he's fully excused, so no talk.
We'll see everybody at 2:15.
(Whereupon, there is a luncheon recess in the proceedings.)

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FTERNOON SESSION
* * * * *

THE OFFICER: ll rise. Part 37 is back in session. The Honorable rthur Engoron presiding. Now, please be seated and come to order.

THE COURT: Let's hear from the defense about Friday's schedule.

MR. KISE: bout what?

THE COURT: Friday's schedule.

MR. KISE: Oh, Friday's schedule. I think we reached an agreement on the 8th, doing Ms. Trump's testimony on the 8th. She's going to move her trip around. That way if we start, we can finish that day and if we don't -- and if we don't finish that day, we will have the night to rollover.

THE COURT: Okay.

MR. KISE: I think at least with Mr. Wallace -- I haven't spoken --

MR. MER: That's fine with us, but I thought the Court was inquiring whether the 3rd was possible if we did a full day rather than a half day.

THE COURT: That was the original idea.

MR. KISE: Well, for the logistical reasons and otherwise I pointed out at least from my end, our end, the 3rd represents a challenge so -- and I don't know that

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we'll get to her. I know we all have these lofty plans when we start early in the week to get through witnesses, but I'm not entirely sure we'll get through the expert, Don, Jr. and Eric by Friday in any event.

MS. H BB : I just talked to them about the schedule. We were just going back and forth. I don't know about the 3rd. I'm not Bennet Moskowitz. That's her attorney. But I know the way the schedule would work now, we have Don Wednesday, Eric Trump --

THE COURT: Thursday.

MS. H BB : -- Thursday. I think they're representing Eric might be longer than Don. If we have Donald Trump on Monday, then at least there's a day off and a clean break that we have. Ivanka goes into the next day. She is here and can do two full days and then they rest.

THE COURT: Do we know who's going to cross-examine Ivanka?

MS. H BB : I don't.

MR. KISE: I don't know that's been decided that we will, but I'm sure -- without Mr. Robert here, I don't want to say anything at all about that decision because I haven't spoken to him about that.

THE COURT: Mr. --

MR. MER: I wanted to mention one thing, so we are clear. My understanding is Eric Trump will testify when

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Donald Trump Jr. is finished. Now, that may be Thursday, but it may also be Wednesday afternoon. I think we don't want to have dead time --

THE COURT: Dead time.

MR. KISE: That seems awfully optimistic. I know they've been eternally optimistic. We never have met those expectations.

MR. MER: I'm putting the marker down because I don't want to hear that we weren't on notice that he could go as early as Wednesday afternoon. I don't know --

MR. KISE: Oh, that. I don't think that's an issue.

THE COURT: Well --

MR. KISE: Without Mr. Robert being here, I can't represent anything, but I don't -- I don't know. I don't anticipate that's going to be that big of an issue.

THE COURT: Well, will Eric be here on Wednesday?

MR. KISE: s far as I know, he will. But again, I'm not representing anything without Mr. Robert here.

MR. MER: Mr. Farina is here. We have somebody who is representing Eric Trump here. I just -- I mean, my understanding is that we start Donald Trump, Jr. Wednesday morning. I don't think we have a full day with him. I think he could be shorter than a full day, so I think in order to not waste time, Eric Trump should be available to

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start whenever we finish Donald Trump, Jr.

MR. KISE: Well, we'll have an answer for you by tonight or tomorrow morning, well in advance of Wednesday. I just don't want to give you an answer that I can't give you only to have to retreat from.

THE COURT: I think we are all okay with Ivanka on the 8th, Wednesday. What will we do Friday? What can we accomplish?

MR. KISE: My questions is we're going to be -- it is an educated guess after what we've been through that we will need Friday to finish the witnesses that are already on deck. I'm pretty sure. Nothing ever goes according to plan.

THE COURT: S-N- -F-U I think they call that.

MR. MER: I don't disagree. We don't have any witness between Eric Trump and Donald Trump. So whenever we finish Eric Trump, I think we're not going to have anything else to put on until Donald Trump goes the following Monday, which is the only day he's available as I understand it.

THE COURT: So we'll leave Friday as a big question mark and we will all agree Ivanka Wednesday, the 8th and possibly Thursday?

MR. KISE: Yes, Your Honor, that's fine.

THE COURT: Okay. Let's get the witness back.

THE COURT OFFICER: Witness entering.

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THE COURT: I will remind the witness, as I always do, that he's still under oath. Let's continue with the cross-examination.
Q Mr. Cerron, have you spoken to the ttorney General since your deposition on Monday October 23rd?
THE COURT: Or anybody from her office.
Q Or anybody from her office?
Yes.
Q Who did you speak to from the ttorney General's office?
Mr. Gaber.
Q When did you speak to Mr. Gaber?
pproximately -- last week if I'm not mistaken, on Thursday.
Q How long was that conversation?
pproximately 45 minutes.
Q nd what did you speak to with Mr. Gaber -- speak about with Mr. Gaber?
Regarding testimony today.
Q What specifically --
THE COURT: I'm not sure the microphone --
MS. HERN NDEZ: I don't know if it is working now.
THE COURT: Now it --
MS. HERN NDEZ: Is that better?
THE COURT: Yes.

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Q So what did you speak to about Mr. Gaber more specifically about your testimony?
Predominantly, it was a review of many of the documents that we've seen here today and kind of generally on questions that I may be asked --
Q So he --
-- by him.
Q So he walked you through the direct examination that you all did earlier today, correct?
We went through some of those documents, yes. I mean, not exactly, but yes.
Q Was there anyone else there other than Mr. Gaber?
I believe there was another gentleman, but I don't remember his name.
Q nd is that the only instance that you spoke to anyone from the ttorney General's office since your deposition?
Yes.
Q You testified --
Just if I could correct.
Q Go ahead.
We did text this morning just to let them know that I was here, procedural stuff, nothing of materiality.
Q Got it. So you testified on direct examination that Ferry Point was a tough one to accomplish, correct?
Correct.

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Q But Trump Ferry Point, LLC did accomplish the goals of the contract, correct?
In which respect?
Q The clubhouse was built, correct?
The clubhouse was built, correct.
Q The golf course was maintained, correct?
nd the golf course was maintained, correct.
Q nd the grass was grown in correctly, correct?
The grass was grown in correctly, that's correct.
Q Mr. Trump put more money in the property than was required under the contract, correct?
To the best of my recollection, the capital commitment exceeded the obligated amount, that's right.
Q nd Trump Ferry Point, LLC met all of their obligations, all of its obligations under the contract, correct?
With regard to the items that we discussed. I don't want to give a blanket, correct, to a pretty sizable document, but with regard to the capital, with regard to the grow-in, with regard to the clubhouse, those were all obligations that were met, yes.
Q re you aware of any obligation that was not met by Trump Ferry Point, LLC as you sit here today?
There's not a firm capital obligation that comes to mind that was not met.
THE COURT: Can you just hit your microphone again.

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We'll call the tech guy.
MS. HERN NDEZ: It says it is on. It's in and out.
THE COURT: Some drunk who's losing consciousness is becoming conscious.
MS. HERN NDEZ: I'll try to project either way.
Q We are going to pull up PX 1331 which is already in evidence. This is Trump's response to request for offers, correct?
Correct.
Q nd you testified on direct examination that you believe this letter was relied on by -- sorry. Go to page seven before I ask this question.
You testified on direct examination that you believe this letter was relied on by Parks, correct?
Correct.
Q But you weren't involved in the award process, correct?
Correct.
Q nd so you don't know for certain what was relied on by Parks during the award process, correct?
I was -- I was not on -- I was not on the selection committee, so to the extent that that is the definitive marker of whether I know something or I don't and how they made that determination, you know, I would agree, but I think when we're talking about this process that -- of awarding concessions that I've been involved in for over a decade and I look at the

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requests for recommendation for award, and it cites the content of this letter. In knowing that process, I do believe that this was part of that determination for, you know -- to help them feel comfortable with financial capability.

MS. HERN NDEZ: Your Honor, I'd like to move to strike that answer as non-responsive. It was a yes or no whether he is aware for certain what was relied on in the award.

THE COURT: Well, off the record.

(Whereupon, a discussion was held off the record.)

THE COURT: I'll ask for a readback and I believe that counselor is correct that part of the answer was non-responsive.

(Whereupon, the requested portion of the record was read back.)

THE COURT: Can you answer that yes or no?

Correct.

MS. HERN NDEZ: So we are going to now pull up PX 3258 which is already in evidence.

THE COURT: nd the earlier answer is stricken because some of it was non-responsive.

MR. G BER: I believe Mr. Cerron on direct testified as to the basis for his understanding as to what was and wasn't relied on.

THE COURT: He did, but --

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MR. G BER: He laid a foundation that I think allows this to be considered responsive.

THE COURT: You can re-direct him if you want.

Q So can we go to page two. So this was admitted. Page two of this document was admitted earlier today and I want to point your attention to the third paragraph there. "This letter should be read in conjunction with Mr. Trump's above-referenced Statement of Financial Condition as of June 30, 2016." Do you see that?

Yes.

Q nd are you aware of any instance where the city requested a Statement of Financial Condition from President Trump in connection with the maintenance of the Ferry Point contract?

Can you repeat that question, please.

Q Sure. re you aware of any instance where the city requested a Statement of Financial Condition from President Trump in connection with the maintenance of the Ferry Point contract?

So this is not a yes or a no. It's the last part of that question is a little bit confusing, so I'm sorry if I'm not able to answer this on the first -- on the first try. But with connection with the maintenance of the course, there was -- there's an annual income statement that's submitted by the concessionaire at the end of each -- at the end of each

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operating year, which we would review. nd that would have information on the costs related to the maintenance of the golf course and it would also have the revenues that would either support that cost or which would not and they might be at a loss or gain depending on how things shook out, but we would not have requested it -- we did not request, you know, certified financial statements, but it would not have been related to maintenance because the maintenance is something we would have seen in the financial statements that they would have sent us purely related just to the course, not to any other business dealings.

Q What you're describing is financial statements from Trump Ferry Point, LLC, correct?

Correct.

Q So did you ever receive President Trump's Statement of Financial Condition during the maintenance?

No. During the term of the license or related to maintenance, no.

Q nd did anyone from Parks ever request the Statement of Financial Condition?

Not that I'm aware of.

Q nd so when you reviewed these "No M C" letters, you did not review them to determine whether President Trump had the financial capability to perform the contract, correct?

Correct.

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Q The determination of whether someone has the financial capability to perform under the contract is largely made during the award process, correct?

Correct.

Q nd your interest in reviewing the "No M C" letters is making sure that all of the obligations under the contract are being completed, correct?

Our interest in reviewing the "No M C" letters is simply just to confirm that what was is what is. So I think that's correct.

Q He was required to submit it and he submitted it, correct?

Correct.

Q nd at the time of this letter, it is dated pril 22, 2017, correct?

Correct.

Q t the time of this letter, there was a rent credit in favor of Trump Ferry Point, LLC, correct?

Correct. nd my apologies. I think at this point, there might have not -- there might have been before the rent kicked in.

Q You're not sure?

If it was '15, '16, '17, this would have been before rent was due because the first five years of the license, there was no rent.

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Q So when you were reviewing this letter, there was no rent due under the license agreement?
Correct.
Q nd as you sit here today, you're not aware of any false statements in this "No M C" letter issued by Mazars, LLP, correct?
Other than, you know, this -- I think the -- some of basis for this trial, but no, I am not aware of, you know, if there's been -- if it's been revised or anything else.
MS. HERN NDEZ: So we're going to move to PX 3280 which is also in evidence. Can you go to the second page, Nate. Only the second page is in evidence.
Q So this is another "No M C" letter, correct?
Correct.
Q nd this one is dated pril 5, 2018, correct?
Correct.
Q nd so highlighting that third paragraph, it says, "This letter should be read in conjunction with Mr. Trump's above-referenced Statement of Financial Condition as of June 30, 2017," correct?
Correct.
Q t the time of this letter, so pril 5, 2018, was there a rent credit in favor of Trump Ferry Point, LLC?
I believe so, yes.
Q nd so the rent credit basically means that the city

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owed Trump money under the contract, correct?
It meant that he had a rent credit. I defer to our attorneys if somehow the license was terminated, whether the city owed money or not, but it meant that the concessionaire had a rent credit.
Q rent credit because he --
Because related to the grow-in, so there was -- once after the five years -- once the license fees were billed, they were billed against a credit of several million dollars that he had, so we would just be drawing down on that credit month over month.
Q Because Trump Ferry Point, LLC and President Trump spent more than what was required under the contract, correct?
For the grow-in, correct. Right.
Q s you sit here today, you're not aware of any false statements in this "No M C" letter issued by Mazars, correct?
Correct.
Q So we are going to move to PX 3281 which is already in evidence. nd so the second paragraph in this one says, "This letter should be read in conjunction with Mr. Trump's above-referenced Statement of Financial Condition including notes and narratives included therewith as of June 30, 2020," correct?
Correct.
Q nd at the time of this letter --

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MS. HERN NDEZ: If you can scroll up a little, Nate.
Q This is dated February 26, 2021, correct?
Correct.
Q nd at the time of this letter, the rent credit that we've been discussing was already in place, correct?
Correct.
Q nd so as you sit here today, you're not aware of any false statements in this "No M C" letter issued by Mazars, correct?
I think as I mentioned, I'm not aware of them except for my understanding is part of the basis of this trial is that these were not -- these were not accurate. So I have not received a letter saying, "Here is a revised statement" or "Here is what the numbers should be." So when I say correct, I'm not aware of it. That's because nothing's been brought to me, but it is something that obviously seems like an outstanding question.
MS. HERN NDEZ: I would move to strike that as non-responsive. It is just whether he is aware of it or not.
THE COURT: I understand where both of you are coming from. Why don't we do this. Can I deem the question withdrawn and you will ask it more precisely if you think you can.

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MS. HERN NDEZ: I can try.
Q So as you sit here today, aside from any allegations in this case, are you aware of any actual false statements in this "No M C" letter issued by Mazars?
I haven't received a correction letter. I have not received anything from Mazars to say that this is -- this is being -- this is being -- these numbers are being corrected. I just -- I feel uncomfortable saying like there's nothing inaccurate here even if I don't know precisely what it is. I'm just not in a position to have the knowledge to know, precisely know what it is and that's part of why I think there is this trial. So I wish I could be more helpful to just in general to anyone in answering that question, but I don't want to represent that my understanding is that there are no misstatements here because I'm just not -- I'm just not sure at this point what the facts are.
MS. HERN NDEZ: Your Honor, could I move to strike that answer as well?
THE COURT: Granted. If you listen to the question, we'll get a --
MR. G BER: If we're talking about any of the other allegations in this trial, then the question is no longer relevant.
THE COURT: Disagree.
MS. HERN NDEZ: I'm asking what Mr. Cerron is aware

of.
THE COURT: Well -- but it is a lot more limited than that.
MS. HERN NDEZ: Correct. Correct.
Q What you are actually aware of? re you actually aware of any false statements that are in this "No M C" letter issued by Mazars in 2021?
I am not aware of any other statements regarding this financial -- these financial documents during this time period.
MR. HERN NDEZ: Okay. Thank you. We can take that down now.
Q So you are familiar with the assignment of the concession for the Ferry Point property from Trump Ferry Point, LLC to Bally's, correct?
Correct.
Q You were involved in working with counsel's office on that deal, correct?
I worked with our -- with the agency's general counsel.
Q So you were involved in that deal, correct?
Yes.
Q nd Bally's paid Trump Ferry Point, LLC approximately $60 million for the assignment of this concession, correct?
That is my understanding, correct.
Q nd so I'm going to show you what's already in evidence

as PX 1501.
MS. HERN NDEZ: The native, Nate, please.
Q So I'm going to represent to you that this is the 2021 supporting data for the Statement of Financial Condition. nd I'm going to direct your attention to Row 575 of the supporting data. Do you see there where it says, "Trump Golf Links Ferry Point"?
I do.
MR. G BER: I'm going to object to foundation here. The witness -- the witness is incompetent to testify on an internal valuation document from the Trump Organization.
THE COURT: The question was simply did he see -- does he see it. So objection overruled without prejudice to see where it goes.
MR. G BER: Okay.
MS. HERN NDEZ: nd on Row 584, you could highlight that, Nate.
Q You see the value in 2021 is $22,548,589?
I do.
Q nd the $22,548,589 is significantly less than the $60 million that you just testified Bally's paid Trump Ferry Point LLC for the assignment of the concession, correct?
THE COURT: I'll take judicial notice that the $22 million is less than the $60 million.
MS. HERN NDEZ: Okay. If Your Honor will take

judicial notice of it, then I have no further questions.
THE COURT: Okay. ny re-direct?
MR. G BER: No, Judge. Thank you.
THE COURT: Okay. We are all finished with this witness, I assume.
Thank you, witness. You're excused.
(Witness excused.)

THE COURT: m I correct that the next witness we are going to hear from via recorded -- video recorded testimony?
MR. MER: That's right, Your Honor. I think we clocked the video at two hours and 16 minutes. I don't think with our afternoon break we're going to be able to play the entire video given our timing, but if we have to spill over until tomorrow morning, then we can just finish it then.
THE COURT: nd why are we not hearing live testimony, which I'm on record as wanting -- valuing?
MR. MER: We were in agreement that the witness is unavailable. She is not in New York, she doesn't work in New York and she is also in her -- knew she was going to be nine months pregnant around the time of the trial.
THE COURT: nd defendants, there is no issue, I assume?
MR. KISE: No, not at this time, Your Honor, no.
THE COURT: Okay. Let's play the movie.
(Whereupon, there is a pause in the proceedings while the video recorded testimony is played in open court.)
THE COURT: Okay. We're going to take a ten-minute break, so I'll see you back here in 15 minutes.
MS. GREENFIELD: Just Counselors for the G, I know that the exhibits for this deposition were marked as

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deposition exhibits. Would it be possible to get a list of the corresponding Plaintiff's Exhibit number that that corresponds to?

MR. MER: I have that and I was going to move all of the exhibits into evidence as soon as the video is over.

MS. GREENFIELD: Fantastic.

THE COURT: So we'll get that in the record. So 15 minutes from now.

(Whereupon, there is a recess in the proceedings.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: I hope you enjoyed the intermission. Let's go back to the movie.

MR. MER: Before we start, I want to confirm you see the table of exhibits?

THE COURT: Thank you very much.

MS. F HERTY: No problem.

THE COURT: Okay. Let's play the feature film.

(Whereupon, there is a pause in the proceedings while the video recorded testimony is played in open court.)

THE COURT: We just want to discuss witnesses for tomorrow.

MR. MER: So the completion of Ms. Mouradian's video deposition -- video de benne esse testimony then we have Mr. Cornwell is next followed by Mr. Orowitz followed

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by Mr. McCarty.

THE COURT: nd we going to finish all of them?

MR. MER: I don't know.

THE COURT: That's a lot more than we've ever done in a day.

MR. MER: My understanding is there will be cross examination of Mr. Cornwell. I don't believe there is cross examination of Mr. Orowitz; is that right?

MS. HERN NDEZ: That's my understanding as well.

MR. MER: nd there certainly will be cross examination of Mr. McCarty, who is our banking expert although, I will say his examination is going to be shorter than it otherwise would have been but for the summary judgment ruling, so we're obviously taking that into account in terms of what is now relevant for him to testify to.

MS. GREENFIELD: ssuming we don't finish all of these witnesses tomorrow, are they available to resume Friday since that morning is now available? You don't have to answer right now, but if you can find out.

MR. MER: Yes. I mean, I think the idea was to have them finish and have Donald Trump, Jr. start when Mr. McCarty is finished.

MS. GREENFIELD: Okay. So it could be Donald Trump, Jr., would start later in the day on Wednesday?

MR. MER: It could be.

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THE COURT: Okay. That's it. Ten o'clock tomorrow. See you all.

Whereupon, the trial proceedings are adjourned to October 30, 2023 at 10:00 a.m.

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$10 (4)
2804:15;2823:8,11,15
$120 (2)
2790:22;2796:4
$150,000 (1)
2830:2
$200 (1)
2797:6
$22 (1)
2851:24
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$25 (1)
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2811:6
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2779:19;2780:17
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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al.

VIDEO DEPO OF C. MOUR DI N, D. CORNWELL, D. OROWITZ
October 31, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

Supreme Courthouse
60 Centre Street
New York, New York
October 31, 2023

B E F O R E:
HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.

THE COURT: Good morning, everyone. Last night, defendants filed a motion in liminae to preclude the plaintiff's expert, Michiel McCarty, from testifying. Defendants first assert, despite repeated rejection from this Court and the First Department, that disgorgement of profits are not available as a remedy in a "purely Executive Law Section 63 (12) case."

For reasons this Court has explained ad naseum, that is simply incorrect, and this Court will not belabor the point here. Disgorgement is clearly an available remedy under Executive Law 63 (12) case.

Defendants next assert that the expert testimony seeks to rely on facts not supported by the record, and that the expert will rely on cherry-picked facts from the ttorney General's office. For example, defendants assert that "the ttorney General certainly could have asked Mr. Haigh whether additional information would have, in fact, altered the loan approvals and/or the pricing. But now, after avoiding what is no doubt unfavorable testimony from

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those directly responsible for approving the loans and determining the terms and pricing, she seeks to fill the factual void in her case with 'expert' testimony amounting to no more than speculation as to what 'might' have happened."

First, obviously plaintiff has free reign to build the record it believe supports its case, as defendants are free to do the same. To that end, defendants' argument that the ttorney General should have asked Mr. Haigh other questions is as a non-starter, as defendants were free to ask Mr. Haigh those questions on cross-examination. The plaintiff is not obligated to ask questions that inure to the defendants' benefit.

Second, contrary to defendant's assertion, the proffered expert testimony relies upon facts that are in the record, not mere speculation. Several witnesses have testified that they would have acted differently had they known that the Statements of Financial Condition were fraudulent.

Further, to the extent that the defendants wish to cross-examine Mr. McCarty about other facts that they believe are in the record, they may do so. Moreover, the proffered expert testimony is not subjective. It is based on four decades of banking expertise, an evaluation of Deutsche Bank's contemporaneous internal communications and

documents, and research into available public sources. If the Court, as the trier of fact, does not find the expert testimony reliable or credible, it may choose to disregard it.

Furthermore, as plaintiff has pointed out, when employing the equitable remedy of disgorgement of profits, precision is not required. s the Second Circuit held in Sec. & Exch. Comm'n v. Fowler, 6 F. 4th 255, 267 (2d Cir 2021), "In general, the amount of disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation. If the disgorgement amount is generally reasonable, any risk of uncertainty about the amount falls on the wrongdoer whose illegal conduct created that uncertainty."

Finally, to the extent defendants assert that McCarty's expert testimony should be precluded because it is beyond the scope of the statute of limitations, as has been explained many times, the statute of limitations bars claims, not evidence. Where, as here, disgorgement of profits is an available remedy, the Court may, depending upon the circumstances, be permitted to look at any "ill-gotten gains" for the entire life of the loan, so long as the final damages award is appropriately prorated to include only such ill-gotten gains that occurred within the statute of limitations.

nd this is all done this morning, by the way. There may be some meaty issues to look into, but this is my current understanding. The motion to preclude is denied and if defendants want to put their objections on the record, they may do so now.

MR. KISE: Thank you, Judge. I'll be brief, but I think I want to at least point out a few things that Your Honor mentioned. First of all, I think you know this, but I just want to make it clear on the record. The issue about disgorgement not being available was not our first argument. It is just simply for not to belabor the point and that's why it is in the footnote.

THE COURT: I appreciate that.

MR. KISE: The fundamental difference here, I guess the disconnect is there's no establishment in the record that the gains are ill-gotten. That's really the issue here. They haven't established that they're ill-gotten. They haven't established that something would have actually been different and that's a very different thing than the SEC case and the other cases they cite. Those cases are traditional fraud cases and materiality and reliance and all of that has been established and so that's what's not been established here.

The purpose of 63 (12) is essentially two-fold. It's one, to stop conduct that the ttorney General -- give

the ttorney General the ability to stop conduct that she thinks may be harming the public. None of that conduct has actually harmed the public or not. That's why in the first instance, to stop the conduct, there doesn't have to be any demonstration that someone has actually been hurt yet.

So using our example, if the ttorney General thinks that someone is using a financial statement in a way that could theoretically harm someone, then she goes to court and says, "You're using a financial statement in a way that could theoretically harm someone." "There is a false or misleading statement, you know, something false or misleading contained in the financial statement. Something's in there and you shouldn't be doing that."

Now, as you know, we disagree with whether or not it is false or misleading, but setting that aside, that's one aspect of the statute. That's one reason it exists, is to stop someone, so the court can issue an order saying stop issuing those false and misleading financial statements. You defendants, stop doing that. That's a very separate issue, though, from the other piece which -- and again, I'm not belaboring this point, but restitution, which we think is allowable under the statute, disgorgement, accepting Your Honor's views at this point without waiving our position, but in order to get there, you have to now establish that something actually took place and the restitution in

disgorgement, you can't just assume theoretically that something is ill-gotten in the disgorgement context.

You can't assume in the restitution context that someone has lost money based on the conduct. You have to actually establish that and that's the part that the ttorney General is skipping over. This ill-gotten concept that their whole case is premised on, the fact that the defendants secured more favorable loan and insurance terms and then retained those terms with each statement, with each submission of the statement ongoing, but that premise assumes something that hasn't been proven.

That's the whole purpose of bringing Mr. McCarty in here. They are assuming that the defendants received something. They secured more favorable loan or insurance terms that they wouldn't have otherwise received. There's just no evidence in the record. nd the point about Mr. Haigh's testimony is not to say, well, they could have asked this question or they could have asked that. The point is to demonstrate that Mr. Haigh's testimony is squarely counter to their position in the case.

Mr. Haigh never said that something would have actually been different. Mr. Haigh never said because they didn't ask him, no, these loans would not have been issued. So they have -- without that testimony, they haven't established that the loan wouldn't have been issued anyway.

nd if the loan would have been issued anyway, there is no ill-gotten gain. It's not possible to have. The bank's role is to make the decision and as Mr. Haigh testified, there's myriad factors. There's multiple, multiple factors. So the bank's role is to make the decision.

The same with the pricing of the loan. The pricing of the loan is something within the bank's determination. Unless the bank comes into court and says, "Yes, I would have priced this loan differently," there's no basis upon which Mr. McCarty can testify as to what that would look like. If the loans would have been the same anyway, then -- and the pricing would have been the same anyway, while an ttorney General can certainly stop someone upon proof from issuing financial statements that contain something false or misleading, a premise we disagree with, but that's very different than now saying that we can recover money under anything, whether it be damages, disgorgement, restitution, without that necessary element of proof because, otherwise, the statute becomes limitless.

Now, we're dealing with the -- the ttorney General called it in their letter response that I saw this morning a counterfactual world. I'm not talking about a counterfactual world. I'm talking about the real world. In the real world, the banks make these decisions. In the real world, the banks evaluate the decision. In the real world,

the banks determine the pricing for loans. That's what happens in the real world.

The ttorney General can postulate, anyone can postulate that something might be different; but unless the bank says it would have been different, meaning that they would have decided something differently, an expert can't come in and now introduce his or her own opinion as to what he or she might have done under the circumstances because there's no room for that sort of -- it renders the statute at that point limitless and I would say respectfully unconstitutional as vague.

There's no way -- there's no way parameters around what conduct it is that's required. So the ttorney General is not allowed at this phase to simply presume and have the Court presume that the Statements of Financial Condition here were relied on, that that was -- and that was material and that that reliance and that materiality then made a difference in the loans. Because again, there's nothing ill-gotten if they haven't proven that anything would have been any different.

That's not a counterfactual world. That's the real world. That's how -- that's how loan transactions works. That's how the capital markets work and what the ttorney General wants to do now is say forget about what the real world thinks, forget about what the bank actually decided on

its own, forget about all this criteria. I mean, Mr. Haigh talked about both on direct, and I won't put it in here, it is in our papers, both on direct and on cross that the approvals terms and pricing were based on multiple factors, innumerable factors. They are all in the credit memos.

He also testified that the relevant approvals year after year after year were based on their own internal analysis. That's not testimony that the ttorney General is free to simply ignore. There has to be something in the record that establishes that something would have been different here because if you don't establish that there was real harm, any real world impact, you can't have an expert come in and say, "Okay. Well, now here is the document."

What the expert is testifying to is a penalty. The expert is now testifying as to a penalty. We think -- the G says, "We think the conduct of using these financial statements was wrong. We don't care whether anything would have been different factually. We don't care whether the banks would have done something differently. We think it is wrong and here is what we think the ill-gotten gains are."

That's -- it's beyond counterintuitive to contend that what the bank actually thinks and what the bank actually did is irrelevant and immaterial to the analysis. So to allow this testimony and to allow this theory, frankly, to advance is to substitute a decade later,

post-closing of the loan transactions the ttorney General's opinion or her expert's opinion, in this case, for what the bank might or might not have done.

I just want to put on the record briefly the cases -- the case law on this is very straightforward and again, the case law that the ttorney General cites, the SEC cases and the one Your Honor cited, those are traditional -- that's where there has been an establishment that there was reliance and materiality and things would have, in fact, been different.

There, the issue is we can't get precise, but the Gathers case, 242 D2d 506, a First Department case, reversed admission of expert testimony because the expert reached his conclusion by assuming material facts not supported by the evidence. That's exactly what Mr. McCarty is going to do here. He is going to assume that the gains are ill-gotten.

They're skipping over the part where they have to establish that the gains are ill-gotten, meaning that the loans would not have been issued in the first place or that the terms would have been different. There's nothing for him to testify on otherwise and an expert is not entitled to just flatly contradict the record evidence. They can't substitute their opinion for what actually is in the record.

The other case that I'll cite in addition to the

ones that are in there in the brief is the Ortiz case, 19 D3d 239, another First Department case. There, the issue is whether or not an accident reconstructionist could come in and reconstruct the accident in a way different than the two eyewitnesses that actually testified to.

nd so again, that's what McCarty is going to do here. He's going to come in and reconstruct the financial analysis irrespective of what the bank would have done, and that's just plainly impermissible because the gains are not ill-gotten until you prove that something would have been different. There's no basis for restitution or, as the Court is saying, disgorgement. There's no basis in the law.

THE COURT: Those are very different --

MR. KISE: I understand that, but both of them hinge on the same underlying premise, though. They are -- the proof is different, but they center around the same underlying premise that something happened that shouldn't have taken place in the first place, that there's already been proof that the gains were ill-gotten. There's already been proof that someone was deprived of something that they shouldn't have. There's already been proof in the case of restitution that someone paid something that they shouldn't have paid and they're entitled to get that money back.

Here, the ttorney General wants to skip over all

of that without any introduction in the record about whether or not the gains themselves are ill-gotten. So experts come in to analyze, evaluate, explain facts that are in the record. They don't substitute their own facts for what's in the record. They opine on the factual predicate as it exists in the case. They don't supply the factual predicate.

So here, what Mr. McCarty is doing, what the ttorney General wants Mr. McCarty to do and is asking this Court to accept, to substitute a factual predicate, to have the Court presume, which he's doing, that the gains are, in fact, ill-gotten before that's ever been established anywhere in the record. nd so it's one thing for the Court to say as it has, again reserving our objection, that these statements are false, stop doing them, stop. I'm going to tell you not to do that in the future, and here is the things I'm going to do to keep you from doing it in the future.

ll of that is step one, but before any dollars and cents can be computed under any theory, there has to be some showing that the gains were ill-gotten. The ttorney General is not simply allowed to substitute her own judgment for that of the bank and using an expert to do that doesn't make it any more proper than it would have in the abstract.

Then I'll make just a final comment on what Your

Honor said at the end about the pre- versus post-statute of limitations period. To the extent that this Court is, in fact, going to pro rate, meaning look at the arguments that we've made --

THE COURT: Subject to some further research on this, of course.

MR. KISE: -- then we can be heard on that later, but yes, I mean, if you want to hear evidence as you've been doing. I mean we object to it, but that's a very different ruling than saying, okay, not only am I going to listen to it, but I'm actually going to come up with a number based on dollars and cents that took place prior to in this instance July 13, 2014.

Our position is, as it must be, that anything that happened with respect to the loan approval or the pricing and terms was set as of the date of the closing. So those subsequent submissions could not possibly have altered that. They would not have changed the pricing decision that was made in 2011, 2012, 2013. They wouldn't have changed those pricing decisions, so there's no -- there's no basis to then assume, again, that there's ill-gotten gain because the subsequent submission of the certification has nothing to do with the initial pricing. That's all wrapped up in the loan agreement.

So there isn't any monetary calculus to be made

with respect to the subsequent certifications. This is -- this goes back to our whole position as to why the subsequent certifications are not false statements in the first place. We're not going to go there today, but because there's no -- it is not connected to any activity, it is not connected to any claim, it is just out there in the abstract.

So for these reasons, Your Honor, most notably that there hasn't been any proof that anything is ill-gotten and that the ttorney General is not allowed to skip over that, we think the admission of Mr. McCarty's opinion is purely speculative and hypothetical. Thank you.

THE COURT: Question for Mr. Robert. Did your colleague start out by saying he would be brief?

MR. ROBERT: It is all relevant, Your Honor.

THE COURT: I would say relative to the Lincoln-Douglas debates of the 1850s in Illinois, which went on for four hours or something. They would talk for two hours and the other guy would talk for two hours.

MR. KISE: I think I kept it under seven pages. Mr. mer set the bar yesterday.

MR. MER: I don't think you did. We clocked it at 15 minutes.

THE COURT: I'll be brief. First of all, I apologize for mispronouncing Haigh's name right. It was

Haigh, not Haigh. I think to a certain extent the defendants are whistling past the graveyard here. they -- they think that all of these financial statements, the people, the employees submit numbers, McConney puts together a spreadsheet. It goes -- it gets reviewed. It goes to Mazars to put together a compilation or they compile these data. They send it to the banks. Nobody relies on them. It's -- I'm sorry. It is a fantasy world.

These things, obviously, are done for reasons and we've had testimony that says, yeah, we looked at that, we relied on that. I don't know whether Haigh ever said we would have done things differently. Of course, defendants could have asked him that. The videotaped testimony we are listening to, she said, "I wish I had known what I know now."

I will leave it at that. I don't want to get into the weeds here. In the motion papers that were filed last night and in what Mr. Kise just said this morning said there were many factors. Nobody is saying, and I'm certainly not saying, that the financial statements were the only factor, but they are a factor. To me, that's -- again, without getting too deep into proximate cause whether the financial statements were "false and misleading," I'll let my 35-page decision and order of September 26th stand on its own.

I think they were clearly false and misleading is a

little bit more subjective statement, but I think the statute covers false. I think -- I think there's also -- there may also be documentary evidence about the internal analysis by Deutsche Bank and maybe some of the other financial institutions about what their statements of finance conditions said. What were they looking at these things for without relying on them? So if the ttorney General wants to say something on the record, I stand by my decision; but for the record, do you agree with me or Mr. Kise?

MR. W LL CE: s to whether or not the defendants are whistling past the graveyard, 100 percent. There is a decision, Your Honor has highlighted it, saying that the statements are false and misleading, and that they were used in business to obtain these loans. I understand Mr. Kise's arguments. I expect to hear them again at closing. I expect to read them in his post-trial brief. I expect to see them if they challenge this decision to the First Department, but the question before us this morning is can an expert witness come in and tell you the difference between a commercial real estate loan price and a private wealth bank price. nd the Court is free to say, "I think that's a fair measure of disgorgement" or "I'm going to find some other measure of disgorgement or "I don't think disgorgement is appropriate in this case," but this evidence

that's going to come in today, if we have enough time, is I, think, admissible and it is up to the Court to accord it whatever weight it decides when it is reaching its final decision.

THE COURT: Okay. Back to Tuesday morning at the movies. Is that what we are?

MR. MER: Yes, Your Honor. We will continue playing the video of Ms. Mouradian. I believe we have just under 50 minutes left to the video and then we'll move in some exhibits.

THE COURT: Okay. Let's do it.

(Whereupon, the video was played.)

(Continued on the next page.)

MR. MER: Your Honor, we do have some exhibits to move in to evidence. First of all, because this wasn't being transcribed, we need to move into evidence the actual --

THE COURT: Video.

MR. MER: -- designations of what we were just playing. So we've marked that as Plaintiff's Exhibit 3324 and ask that it be admitted into evidence.

THE COURT: Granted. It's in evidence.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3324 in evidence.)

MR. MER: nd then we have Deposition Exhibit 1, which we've marked as Plaintiff's Exhibit 1540. We ask that that be admitted into evidence.

MS. HERN NDEZ: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1540 in evidence.)

MR. MER: Deposition Exhibit 2, that's Plaintiff's Exhibit 1548. We ask that that be admitted into evidence.

MS. HERN NDEZ: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is

received and marked Plaintiff's Exhibit Number 1548 in evidence.)

MR. MER: Deposition Exhibit 3, we marked as Plaintiff's Exhibit 1552, and ask that be admitted into evidence.

MS. HERN NDEZ: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1552 in evidence.)

MR. MER: Deposition Exhibit 4, Plaintiff's Exhibit 2313, and we ask that that be admitted into evidence.

MS. HERN NDEZ: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2313 in evidence.)

MR. MER: Exhibit 5, Deposition Exhibit 5 is Plaintiff's Exhibit 1542, and we ask that that be admitted into evidence.

MS. HERN NDEZ: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1542 in

evidence.)

MR. MER: Deposition Exhibit 6, Plaintiff's Exhibit 1561, we ask that that be admitted.

MS. HERN NDEZ: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1561 in evidence.)

MR. MER: nd Deposition Exhibit 7, Plaintiff's Exhibit 3014, we ask that be admitted into evidence.

MS. HERN NDEZ: So that one we have an objection to, as sad as I am to break up that little routine we had going.

To PX 3014 has a cover e-mail that was not shown to Ms. Mouradian, so I don't have an objection to the remainder of the exhibit coming in, but that cover e-mail was not part of the deposition.

MR. MER: We're fine if we put it in without the cover e-mail because it wasn't anything that she was asked about.

THE COURT: Okay. Granted, but only as to or except as to the cover e-mail.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3014 in evidence.)

MR. MER: There were two other deposition exhibits which were excerpts, one from the complaint and one from the deposition of Mr. Weisselberg. Those were read into the record, so they'll be in the exhibit we've admitted, which is Exhibit 3324.

THE COURT: Sounds right.

MS. HERN NDEZ: That's fine.

THE COURT: Okay. Granted.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3324 in evidence.)

MS. HERN NDEZ: nd, Your Honor, we would also like to move in the two defense exhibits that were used, so we would like to move into evidence D 969, which was Defense Exhibit in the deposition.

MR. MER: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number D 969 in evidence.)

MS. HERN NDEZ: nd we'd like to move D 970, which was Defendant's Exhibit B.

MR. MER: No objection.

THE COURT: Granted.

(Whereupon, the item previously referred to is

received and marked Defendant's Exhibit Number D 970 in evidence.)

MR. MER: That concludes the movie, Your Honor.

THE COURT: Okay. Is anybody hungry? Tired? Okay, 15-minute break or ten-minute break over the next 15 minutes. See you in 15 minutes.

(Whereupon, there is a recess in the proceedings.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: Would the Plaintiff like to call the next witness?

MR. FINKELSTEIN: The People call K. Don Cornwell to the stand.

THE COURT: Okay. Let's get the witness.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT OFFICER: Please raise your right hand. Do you solemnly swear or affirm that the testimony you give will be the truth, the whole truth and nothing but the truth?

K. D O N C O R N W E L L, called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes.

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THE COURT OFFICER: Please have a seat. State your name and either home or business address for the record.
THE WITNESS: Don Cornwell. I live at 90 Furman Street, Brooklyn, New York, partment 1004.
THE COURT: But before you do, to quote Groucho Marx, " hot dog stand would clean up around here."
Please proceed.
DIRECT EX MIN TION
BY MR. FINKELSTEIN:
Q Good morning, Mr. Cornwell.
Morning.
Q Can you please describe your educational background post high school?
Sure. I attended Harvard College where I studied government, graduated from there 1992. Then, I went to Stanford for business school where I received an MB . I graduated 1998.
THE COURT: Please speak a little louder. You have to go right into the microphone like that and we'll be good.
THE WITNESS: Is that better?
THE COURT: Now we're in business.
THE WITNESS: ll right.
Q Can you provide a brief overview of your employment history post college?
Sure. Post Harvard I worked at McKinsey Management Consulting Company for two years in New York. fter that, I

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worked for two years at the National Football League, '94 to '96. Post business school starting 1998 I was at Morgan Stanley for 17 years until 2015. 2015, I left Morgan Stanley for a firm called PJT Partners. I was there for eight years and for the last year I've run a private equity firm called Dynasty Equity.
Q nd what is PJT Partners?
It's an investment bank.
Q nd where is that based?
New York City.
Q nd what was your role at PJT Partners?
I was a partner doing MN work around sports and gaming.
Q nd after that you went to Dynasty Equity. What is Dynasty Equity?
Dynasty Equity is an investment firm focused on sports.
Q What is your role at Dynasty Equity?
Cofounder and CEO.
Q Focusing your time at Morgan Stanley, what titles or positions did you hold there?
I started there in the summer of 1997 as a summer associate while in business school. 1998, I was an associate eventually getting promoted to managing director in 2007.
From 2007-2015, I was a managing director and certain times towards the last five years I was the global head of sports investment banking.

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Q nd what were your duties and responsibilities as an associate at Morgan Stanley?
Hard work. I executed transactions. So in any given deal, you have a deal team. For the most part the associate did a lot of the analytics, a lot of putting together presentations and the like.
Q nd how, if at all, did your responsibilities change upon becoming managing director in and around 2007?
I actually progressed through you start to lead teams and be responsible for revenue generation and getting new clients.
Q nd do -- you also mentioned the title "head of global sports investment banking?"
Yes.
Q Did your responsibilities change with that title?
No, same thing. I was just the lead investment banker on all sports deals.
Q Did there come a time when Morgan Stanley was tapped to assist the Wilson estate in selling the Buffalo Bills?
Yes.
Q Who are the Buffalo Bills?
They are a franchise in the National Football League.
Q How did Morgan Stanley become involved in the Buffalo Bills transaction?
So the estate of Ralph Wilson was looking to sell the

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team and as part of that process they needed to hire an investment bank. They invited several different firms to give a presentation about their credentials and Morgan Stanley was one of those participants.
Q What was Morgan Stanley's role in the transaction once it was picked by the Wilson estate?
Yes, we led the transaction and assisted with the estate, the trustees, to help them find a buyer for the team.
MR. FINKELSTEIN: I'd like to hand up PX 980 to the witness for identification.
Q Do you recognize this document?
I do.
Q What do you recognize it to be?
This is an e-mail -- well, it's an e-mail thread, but the e-mail is from me to one of my colleagues discussing our first round bid letters in the Buffalo Bills process.
Q So you just referenced the bid letter. What do you mean by that?
So this MN process is one which is very common where we had two steps and what happens is you have interested buyers, people who indicated they'd like to learn more about the asset that you're selling. You've signed a non-disclosure agreement, you give them information, they provide you a bid, a first round bid based on information you've received. Then what happens is you review the bids and you take some or all of the folks who've

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submitted bids letters into the next phase of the process where they get to have the opportunity to do diligence, take site tours and decide if they want to further acquire the asset they have.

Q So is there any process to screen through the letters you received in the first step?

I'm sorry, say again.

Q My question was did the Morgan Stanley have any process to screen through the letters that you received in the first step that you just described?

Yes, absolutely. We obviously read the letters and what we're trying to achieve in the process is really two things: We want the highest value and certainty of closing and so what we look for in those letters is, number one, what they think valuation is; number two, we start the process of understanding what their ability to close will be.

Q So in this first message that's shown on the screen there are several attachments. I would like to just direct your attention to two of those attachments.

So if we could turn to page eight? Do you recognize this letter?

I do.

Q What do you recognize it to be?

This was the bid -- first round bid letter that we received from the Trump Organization.

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Q nd this letter is addressed to you at Morgan Stanley?

That is correct.

Q nd what is the date of this letter?

July 29, 2014.

Q What was your understanding of the purpose of this letter?

This letter was to indicate that the Trump Organization would like to buy the Buffalo Bills for $1 billion.

Q nd turning to the second paragraph of the letter, the letter states: "I have a net worth in excess of $8 billion (financial statements to be provided upon request)."

Does -- was that representation considered by Morgan Stanley in the bidding process?

It was, although we also received another letter that was very important. In our bid instructions we ask people to provide us proof of funds.

Q Did Morgan Stanley ever request financial statements from Donald Trump?

Yes.

Q I would like to direct your attention to the third paragraph on the bottom, the next page, page nine. It says, "Please feel free to call Rosemary Vrablic, managing director of Deutsche Bank's private wealth management; Mr. llen Weisselberg, chief financial officer of the Trump Organization; or me directly if you have any questions about this bid."

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Do you ever recall speaking with Rosemary Vrablic regarding this bid?

I don't recall.

Q Do you recall ever speaking with llen Weisselberg regarding this bid?

I don't recall.

Q Do you recall ever speaking with Donald J. Trump regarding this bid?

Yes.

Q What do you recall about that?

Not much.

Q So I would like to now turn to page 20 of the exhibit. So you had mentioned earlier that there was a second letter. Does this appear to be that letter?

Yes, it does.

Q What do you recognize this letter to be?

This was a letter we got from Deutsche Bank indicating something about Donald Trump's net worth.

Q nd was it your understanding that Deutsche Bank provided this letter to you at the behest of Donald Trump?

Yes.

Q nd in the third paragraph the letter reads: "Our understanding is that Mr. Donald J. Trump has made or intends to make a bid for the Buffalo Bills in the amount of $1 billion in the aggregate. Based upon our preliminary review

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of the current financial information of Mr. Donald J. Trump made available to us, including liquidity and asset value, it is our assessment that Mr. Donald J. Trump would have the financial wherewithal to fund his bid."

Did you have any understanding of what financial information Mr. Trump made available to Deutsche Bank?

I did not.

Q Was the representation I just read important to Morgan Stanley in its role in managing the bidding process for the Buffalo Bills?

Yes.

Q Why was it important?

We asked for some proof of funds and at this stage of the process a letter from a credible, reputable bank sufficed.

MR. FINKELSTEIN: Your Honor, I would like to move to admit PX 980 into evidence.

MR. ROBERT: Objection. Relevance and statute of limitations.

THE COURT: Overruled. Granted. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 980 in evidence.)

MR. FINKELSTEIN: If we can set that aside and move on to a new document? I'm handing to the witness through the court officer for identification PX 3274.

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MR. ROBERT: Your Honor, in that last exhibit I saw there were a series of attachments in the PDF. Since it was just electronic, what's being moved in, just recovery e-mail and the one attachment referenced or all the attachments?

MR. FINKELSTEIN: I believe the witness has foundation so that we can move in the whole thing.

MR. ROBERT: Can we look at it and see what it is? Because they look like bids from other people.

THE COURT: Those would probably not be relevant.

MR. FINKELSTEIN: t a minimum we would like to move in the e-mail and both of the letters we just looked at.

THE COURT: Those are granted -- that's granted. Those are in.

Q Do you recognize PX 3274 in front of you?

I do.

Q What do you recognize it to be?

Looks like an e-mail from Michael Cohen to my colleague, lex Hill.

Q Do there appear to be additional messages in this thread?

Yes. There is some back and forth between lex and Michael.

Q So I'd like to direct your attention to page four. There is an e-mail from Michael Cohen to lex Hill with you

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cc'd. Do you see that?

Yes, yes.

Q nd who is lex hill?

lex was a colleague of mine, somebody -- a member of my team at Morgan Stanley.

Q The e-mail says: " lex, Jason Greenblatt and I just dropped off a packet with Margay at your office for Don. Can you please ensure he receives it and advise me so I can confirm to Mr. Trump its receipt? Thank you."

What is your understanding of what Michael Cohen meant when he said he dropped off the packet for Don?

The bid package.

Q nd the bid -- what did the bid package contain?

I know it contained a letter, the two letters that we saw. I don't know if there is anything else.

Q So in the middle of page three, lex Hill sends a message to Michael Cohen and to you saying "regarding management presentation dates, would you all be able to do ugust 6th in Detroit?" What is a management presentation as described in this e-mail?

Sure. So as I talked about in the second part of the MN process as part of diligence we would provide potential bidders an opportunity to meet with the management team. Typically, what happens in those meetings is the management team presents the story of the asset. So in this case it was the

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team CEO talking about the future of the Buffalo Bills and why it's such a great asset.

Q Did the Trump Organization in fact receive a management presentation?

They did.

Q Were you present?

I was.

Q Who from the Trump Organization do you recall attending?

I know Donald Trump was there. I don't recall who else. He had people with him, but I don't recall those people were.

Q What, if anything, do you recall being discussed at the management presentation?

We talked about the Buffalo Bills and lots of topics. We talked about the USFL, we talked about lots of things, but it was sort of a wide-ranging conversation.

Q Do you recall whether Mr. Trump provided any documents to you at the presentation?

He gave us handouts of the Forbes list of top paid entertainers.

Q On page two of the e-mail lex hill writes a message to Jason Greenblatt and Michael Cohen with you cc'd that says: "One near term NFL item we would like you all to fill out and have Mr. Trump sign is the attached uthorization and Consent to

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Release Records." What is the uthorization and Consent to Release Records?

So in order to purchase an NFL team you have to go through a very thorough financial review with the league office. s we progressed through the process we want to make sure that bidders are getting the appropriate paperwork into the league so they can begin that process because it does take sometime so that uthorization and Consent to Release Records is something we need from each perspective bidder so therefore the NFL can go and start doing their diligence.

Q So at the very first message in this document is a message from Michael Cohen that says "after some internal deliberation, we feel it is premature to sign the consent to release forms until such time as we know that Mr. Trump is the final bidder." Do you recall learning in or about ugust 2014 that the Trump Organization was refusing to sign the consent to release records?

I do.

Q Did Morgan Stanley ever receive signed consent to release records forms?

We did not.

Q fter the management presentation that we just discussed did the bidding process continue?

It did.

Q What happened next?

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We continued having those meetings with other parties. Several parties took stadium tours. We then asked for final bids. I don't recall the exact date. We got those final bids and we decided on the winning bidder. That winning bidder then went through the NFL approval process and became owners of the team I believe in October that year.

MR. FINKELSTEIN: Before we get to that really quickly, Your Honor, I move to admit PX 3274 into evidence.

THE COURT: Granted.

MR. ROBERT: Objection. Relevance. Statute of limitations.

THE COURT: Overruled. Granted. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3274 in evidence.)

Q I'll now hand the witness for identification a document marked PX 3219. Do you recognize this document?

I do.

Q What do you recognize it to be?

This is a letter or an e-mail from Daniel Barzac, who is a member of my team, to me discussing a draft of what we call fairness materials.

Q What are fairness materials?

So in certain circumstances an investment bank will provide what's called a fairness opinions to -- mostly a board

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of directors, but in this case we were providing that fairness opinion to the trustees of Ralph Wilson's estate.

Q So on page five of this exhibit there is a slide titled "Evolution of Participants."

That's a good title.

Q The slide states that nine parties gave initial indications. Was Donald Trump one of those nine parties?

He was.

Q The slide states that five parties received management presentations. Was Donald Trump one of those five parties?

He was.

Q The slide states that six parties gave final offers. Was Donald Trump one of those parties?

Don't recall the nature of his final offer.

Q But he is?

Listed, yes.

Q Is Donald Trump's name listed?

Yes, it is.

Q Do you have any reason to dispute that Donald Trump provided a final --

No.

Q So going back to page four, the slide is titled "Summary of Key Transaction Terms." Do you see that?

I do.

Q Who is the purchaser of this bid on this page?

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Terry and Kim Pegula.

Q How much is the purchase price listed?

$1.4 billion.

Q Did the Pegulas in fact purchase the Bills for $1.4 billion?

Yes.

Q Does this -- do these attached fairness materials accurately summarize the terms of the transaction?

Yes.

MR. FINKELSTEIN: Your Honor, I move to admit PX 3219 into evidence.

MR. FIELDS: Objection. Statute of limitations.

THE COURT: What's the relevance of this? This particular page, let's say?

MR. FINKELSTEIN: So this page was just to summarize the final result of the transaction and the other page was to show that Donald Trump participated in all three stages of the bidding process, even though his bid did not turn out to be the final.

MR. FERIS: Your Honor, it's the defendants's position none of this is relevant to any cause of this case. We agree with Your Honor here. This is completely irrelevant.

THE COURT: I just asked the question. What's the relevance of the final bid? We know the successful bid.

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ttorney General?

MR. FINKELSTEIN: I am offering it for clarification just to show the full story on the Bills' transaction. The amount of the bid is not necessarily relevant, just I was just trying to show that Donald Trump was not the ultimate buyer.

THE COURT: I'll let it in. There is no jury, doesn't really matter, but I understand you're completing the circle.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3219 in evidence.)

MR. FINKELSTEIN: That's all. nd I have no further questions.

THE COURT: Okay. ny cross examination?

MR. FERIS: Yes, Your Honor.

THE COURT: Counselor, I don't believe we ever met.

MR. FERIS: My name is Ivan Feris, Your Honor. Can you hear me, Your Honor?

THE COURT: Loud and clear.

MR. FERRIS: wesome. s I was saying, my name is Ivan Feris, and I'm here on behalf of several of the corporate defendants in this matter.

THE COURT: Welcome.

MR. FERRIS: Thank you.

nd if it may please the Court, I would like to proceed.

THE COURT: Please do so.

DIRECT EX MIN TION

BY MR. FERIS:

Q Hello, Mr. Cornwell.

How are you?

Q s you heard, my name is Ivan Feris. I'm going to ask you a series of yes-or-no questions and to the best of your ability, please try to answer them with yes or no, okay?

So, we just heard from you that President Trump was not the ultimate buyer of the Bills; correct?

Yes.

Q I want to talk a little bit about how the process of selling a professional football team works.

You told us here in your direct examination that Morgan Stanley had to compete for a spot to sell the Bills?

Yes.

Q nd the process started somewhere in pril of 2014 or closer to that date; right?

I don't exactly recall.

Transcript continues on the following page....

Q nd you as a member of Morgan Stanley and Morgan Stanley as a bank had to participate in what is known as a bake off for the opportunity, right?

Yes.

Q Okay. So this bake off, Morgan Stanley would gather a list of potential buyers and eventually make a pitch to the seller of the team, correct?

No.

Q You told us here on your direct that you would gather potential buyers and that was Morgan Stanley's role, right?

We did more than that, yes. We presented our credentials.

Q That was part of what you did, though, right, gather the list of buyers?

Yes.

Q nd other banks did the same thing?

I don't know.

MR. FERIS: Can I pull up document D1001, please.

Q I'm showing you this document, Mr. Cornwell, to see if it refreshes your recollection. Right at the top, it says, "From Cornwell K. Don." That's you, right?

Yes.

Q It says, "Three banks invited including us" in the second bullet point. Do you see that there?

Yes.

Q You said that your "best guess is GS, JPM based on their experience and league relationships," right?

Yes, that's what I wrote.

Q So other banks were involved in the bake off, right?

Yes.

Q Correct. So -- and Morgan Stanley was ultimately the bank chosen out of the options?

Yes.

Q nd Morgan Stanley had an incentive to put a list together of suitable buyers, right?

I don't understand the question.

Q You weren't just going to put anybody on that list?

No, I wouldn't just put anybody on the list.

Q Morgan Stanley had to stand by that list, right?

No, nothing binding about the list.

Q Nothing binding, but Morgan Stanley's name was on the list, right, that it submitted?

We would not have been a buyer of the Buffalo Bills.

Q Can you repeat that?

Morgan Stanley would not have been -- I don't understand the question.

Q Morgan Stanley would submit the list of buyers on behalf of Morgan Stanley trying to get chosen as the bank who would broker the sale, right?

Yeah. The process wasn't one where we submitted a

list.

Q You didn't submit a list? What --

That's not how that works.

Q We'll come back to that later, sir.

In the list of buyers that you did put together, you placed Donald Trump, the President of the United States later, he later became the president on the list, right?

Yes. He had publicly indicated he was interested in the team.

Q nd the list was eventually submitted to the CFO of the Bills, right?

Presented to.

Q Presented.

To the trustees.

Q nd it was also presented to the NFL eventually?

It was discussed with the NFL.

Q nd even before Morgan Stanley was chosen, you knew President Trump was, right?

Yes.

Q That's right. nd his name came to your mind even before Morgan Stanley was chosen as the bank that would broker the sale, right?

He probably stated he was interested. He was Tweeting about it.

Q But in your mind, Donald Trump was not an option as a

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buyer, right?
So you're referring to what I wrote here, "Donald Trump is not an option"?
Q Correct.
The NFL had or still has a rule around people involved in gaming being prohibited from buying NFL teams. So this was a discussion that needed to happen with the NFL, his suitability for NFL ownership because of his affiliation with casinos.
Q So in your mind, he wasn't an option at the time, right?
t that time, yes.
Q So one of the things that you said that you looked at was certainty of closing, correct?
Yes.
Q But before you started the process, you knew that Trump President Trump was not likely to close; am I right?
We needed to have a conversation with the National Football League.
Q Is that a yes, sir?
No.
Q But he wasn't an option to you. You admitted that much, right?
We needed to have a conversation actually both with the National Football League and with the Trump Organization to understand where they sat in the gaming world. His affiliations

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were unclear to us.
Q Regardless of how you felt about him, his name came to mind when Morgan Stanley was competing for the chance to broker the sale, correct?
Yes.
Q nd this was before you actually spoke to President Trump about the sale of the Bills, right?
Yes.
Q You needed to have a conversation. You just testified to that, right?
Yes.
Q This was before any financial disclosure was provided to you from President Trump, correct?
Yes.
MR. FERIS: Can we pull that e-mail back up, please. Your Honor, I would like to move D1001 into evidence.
MR. FINKELSTEIN: No objection.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Defendant's Exhibit 1001.)
Q nd even before Morgan Stanley was chosen to broker the sale, President Trump showed some interest in wanting to buy the Buffalo Bills, correct?
Yes.

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Q In fact, the chairman of Morgan Stanley communicated with President Trump's interest to you, correct?
Chairman --
Q The chairman at the time.
No. No.
Q No?
MR. FERIS: Can we get on the screen D1002, please.
Jeff's not -- he was not the chairman of Morgan Stanley.
Q Doesn't it say the "chairman of the institutional securities"?
That's not Morgan Stanley, so he's -- he had a chairman title. He was not the chairman of Morgan Stanley.
Q He was a chairman?
Yes.
Q So he was a chairman, just to get it clear?
No, no, not the chairman of the board, but okay.
Q He was the chairman of institutional securities at Morgan Stanley, right?
Yes. Yes.
Q So that's accurately reflected on that e-mail there, highlighted on the screen?
I assume so, yes.
Q Just making sure.
nd at this time, the bank was still participating in

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the bake off, right?
I don't know the timing. I have to -- I don't recall the timing of the various meetings.
Q But you thought according to this e-mail that President Trump had no chance of being approved by the NFL? Is that true? I'm looking at page two of the e-mail.
Yes.
Q Yes, right.
How do you pronounce his name, so I don't butcher it?
Holzschuh.
Q So he told you that he had spent some time with Donald Trump, correct?
Correct.
Q nd he told you that President Trump wanted your help with buying the Bills, right, putting in an offer?
Yes.
Q nd he asked you what's your view? You were asked by James Head on behalf of Mr. Holzschuh?
Yes.
Q You thought that President Trump had little chance of being approved by the NFL, true?
Yes.
Q You knew that the president had been previously involved with litigation involving the NFL?
Yes.

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Q You told us that here today, right?
Yes.
Q But that President Trump's strong show of interest doesn't hurt the process, correct?
I'm sorry. re you quoting something? Where are you?
Q t the top of page two, you said, "That being said, his strong show of interest doesn't hurt the process, which I think will be well-attended both north of the border and down into NYC"?
Yes.
Q So President Trump being involved didn't hurt the process?
No.
Q That means it helped the process, right?
Hard for me to know.
Q You were the managing director at this time, right?
Yeah, but I can't tell you whether it helped or hurt.
Q You told us that as a managing director, it was your responsibility to lead these type of transactions?
Yes.
Q So you were involved, right? You had information relevant to this, correct? You thought that --
t this point, I'm now looking at the dates. t this point, we weren't hired to sell the team.
Q Which was one conflict. "We are of three pitching for

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sell side assignment?"
That's correct.
Q So at this time, there were conflicts with President Trump potentially?
President Trump had asked if we would represent --
Q Sir, yes or no? My question is a yes-or-no question. Did you have a conflict with President Trump; yes or no?
No.
Q Is that what you said in your e-mail there?
We hadn't been hired yet.
Q So it was a potential conflict?
Potential. There you go.
Q Okay. nd you said that you thought that wealthy hedge fund guys would take a hard look?
Yes.
Q So President Trump being involved attracted other bidders?
I don't know.
Q You don't know? So you're telling me here that a world-renowned person like President Trump showing interest in the bills, you don't know if that would have attracted other bidders?
Many times, that can scare away other bidders.
Q What was that, sir?

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Many times, that can scare away other bidders.
Q But your incentive as the managing director at this time before -- even before the sale was to attract as many bidders as possible, right?
t this time, my incentive was to get hired.
Q nd you would get hired. You would agree the more bidders you had, the more attractive the bank would be to the seller, right, more qualified bidders?
No.
Q So you're saying if you had only one bidder on the list, you were more likely to get chosen?
No.
Q No, right.
THE COURT: Please, one at a time, so the reporter can take this all down.
MR. FERIS: Sure, Your Honor.
Q nd then the conversation continues with Mr. Holzschuh on the first page of this document and he said that "He probably does have the dough and he told me the bid was 1 billion, so at least he's in the right ballpark," correct?
That's what the e-mail says.
Q But he told you that he was glad to pass on Donald Trump if that was the call, correct?
Yes.
Q Or at least you could tell him that since you were

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baking off, you could hold off the president for a little bit, right?
That's not what the e-mail says.
Q "Can certainly tell him we are baking off for sell side and not free until we know the outcome." That's what he said, right?
Correct.
Q nd you told him that "I can get an unofficial view from the league office on Trump pretty easily if that's helpful"?
Yes.
Q So despite certain issues, Morgan Stanley didn't turn away Trump's business outright, correct? I can rephrase my question.
No. I don't understand the question.
Q You had the opportunity to pass on President Trump, right?
Pass what?
Q Pass on him as a buyer. Is that not what this meant, "glad to pass if that's" --
Representing him.
Q s a buyer?
This would be us working for him. That's what this was about. This was us representing him.
Q You put President Trump on the ultimate list of buyers,

right?
Yes.
Q You didn't have to do that?
So in an estate sale --
Q Yes or no, please, sir.
THE COURT: It is a yes or no.
No.
Q You didn't have to put him on the list?
No.
THE COURT: Hold on a second. I'll ask that the witness be excused from the room for a minute and I can talk to the attorneys.
(Witness exits the stand.)
THE COURT: Well, we spent I don't know how long, but a significant period of time in which the questions seem to elicit some sort of prejudice against President Trump or against some sort of bait and switch. I don't know where we are going with this. I don't know what this proves. Can I get an offer of proof from anybody?
MR. KISE: It goes back to what we were talking about this morning, which I think we need to be allowed to make this record whether or not you actually agree with us. They need to establish that there is materiality and reliance. It's not enough that a piece of paper was handed to someone that contained, in your view over our objection,

a false statement. That establishes only one piece of the case. That was the piece of the case that you decided on summary judgment. That doesn't establish anything about this part of the case.
The two are not connected necessarily and I respectfully disagree with your conclusion, apparently, that they are because if no one does anything with it, if no one relies on it, then it has no impact of any kind, no real world impact. Even if it is out there, even if it is inaccurate, it has no real impact.
So here with this witness, what we will establish is Trump was never a serious bidder in the first place. This guy's dancing all over the place. I'm not sure why, but they never considered him a serious bidder. They took him in to use his name to gin up the price. Sorry. To bid up the price. That's one of those --
THE COURT: It's a southern thing.
MR. KISE: Right. But that's what they were doing. They were using Trump to manipulate the purchase price thinking that he wasn't really a serious contender at all.
nd so the financial information that came in, so what, okay? gain, back to my point this morning. Whether that financial information contained something accurate or inaccurate is immaterial if the recipient of the information doesn't do anything with it. Just like with the bank. If

the bank doesn't actually -- you know. So any way, that's really where we are going, to just establish --
THE COURT: There was no reliance on the statement.
MR. KISE: We think the whole thing is irrelevant because there's no claim or cause of action. We think the entirety of this is not correct so -- and I'll wait. You may have a question. I see that Ms. Greenfield passed you a note, so you may have a question.
THE COURT: She's asking me what I'm going to have for lunch.
MR. KISE: Okay. I can help you with that. Thank you.
THE COURT: Mr. Wallace, would you like to respond?
MR. W LL CE: I was just going to say this obviously goes to use and business and repeated use of the false statements. Not every single use is going to generate some disgorgement amount or something else. That's why this is in. That's why it has been introduced. I think part of the reason I guess he's dancing around is I found the questions confusing myself, but obviously, that's the reason why the people are introducing this evidence and it is fairly limited. Thank you.
THE COURT: Well, how much longer do you think your cross-examination will be?
MR. FERIS: It really depends on how the witness

answers the questions, Your Honor, but not much longer. I think I'll be done before lunch.
THE COURT: ll right. s is often the case, my attempt to save time is just costing time. So I understand Mr. Kise's point about reliance, so let's get the witness back.
Q Welcome back, Mr. Cornwell.
Thank you.
Q So before you left, we established that Morgan Stanley didn't flat out turn away President Trump, right?
For what?
Q s a buyer, potential buyer.
No.
Q No, right. Had the chance to, but didn't, correct?
Sure.
Q So let's talk about what Morgan Stanley did before the potential buyer submitted bids.
Yes.
Q Now, I'm no expert in the sale of an NFL team, but you would agree with me that the bidding process is essentially a competition between the potential buyers, right?
Yes, and this was an open process because of the estate sale, so we had to talk to all interested parties.
Q nd the potential buyers would each submit a bid or series of bids, right?

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That is correct.
Q nd at this point, Morgan Stanley wouldn't simply turn away buyers if they thought that a bidder was qualified on basic information it had?
We gave all people an opportunity to credentialize themselves.
Q nd even if a bidder had potential problems, that would ultimately disqualify them in the beginning stages? You weren't turning away buyers, right?
No.
Q nd you told me that you would vet these buyers, you would give them a chance to qualify themselves?
Credentialize themselves, yes.
Q Yes, credentialize. Generally, the more qualified suiters for an NFL team, the higher the ultimate selling price would be, right? That's what drives the competition?
No. No.
Q So people don't bid against each other driving up the selling price? Is that what you're telling me?
Sometimes.
Q nd the higher the selling price, the more money that Morgan Stanley would earn on the deal, right?
I don't recall.
Q You don't recall?
MR. FERIS: Can I, please, have the Morgan Stanley

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document up on the screen. I want to go here where it says "brokerage." Can you zoom in on that?
Q This is from the Morgan Stanley website. It says, "For brokerage activity, we offer transaction-based pricing in which you pay commissions, sales loads, markups, markdowns, or other fees for each transaction you and your financial advisor execute", correct?
MR. FINKELSTEIN: I would like to object to this document that has not been previously identified or otherwise provided to us.
MR. FERIS: Your Honor, he doesn't recall and I'm showing him something to refresh his recollection.
THE COURT: If it is just to refresh his recollection, you can --
MR. G BER: Does the witness have to indicate what would refresh his -- it is withdrawn.
Q So Morgan Stanley earns commissions off the sales price, correct?
That is not related to investment banking, this document.
Q This is not about Morgan Stanley's services?
This is about brokerage services.
THE COURT: Hold on. I think first you have to ask does this refresh your recollection.
Q Does this refresh your recollection, sir?

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No.
MR. FERIS: We can take it down.
Q Part of your job on behalf of the estate was to maximize the selling price, right?
Yes.
Q nd the bidder might be included in that process simply because they drive up the value, correct?
Restate the question, please.
Q bidder might be included simply because they drive up the value, correct?
Yes.
Q nd you told me earlier that representatives of Morgan Stanley met with the NFL to discuss potential buyers before bids were submitted, right?
Yes.
MR. FERIS: Can we get 1003 up here on the screen.
Q This is an e-mail from Robert Kindler on which you're cc'd, your e-mail is cc'd, right?
To Robert Kindler.
Q In which you were cc'd from lex Hill?
Yes.
Q nd you discussed President Trump at the meeting with the NFL, right?
Yes.
Q nd the NFL raised some concerns about President

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Trump's liquidity, true, looking at the fourth bullet point there.
Yes.
Q They also question his ability to get votes?
Yes.
Q The NFL wanted to look at certain management contracts that President Trump was involved in, correct?
Yes.
Q Despite all this, the NFL was not opposed to Donald Trump submitting a bid, right?
They had no jurisdiction over who submits a bid.
Q If I could point you to David Einhorn, it says, "Unlikely, but no problems from the NFL's perspective," right?
Yes.
Q So the NFL could have told you, "We have a problem with this person," right?
Yes, but somebody could still submit a bid.
Q But they didn't tell you that about Mr. Trump?
Sorry. Tell me what?
Q Withdrawn.
Morgan Stanley didn't oppose President Trump submitting a bid, right?
No.
Q nd this meeting took place before any official offer was made, right?

Yes.
Q You still had not received any financial representation from President Trump?
No.
Q This was just based on the Trump name and the conversation with NFL, right?
No.
Q So you had no financial disclosure from President Trump, right?
No.
THE COURT: You know, again, and I've been saying this all trial long, when you ask negative questions, "so you didn't, did you," the answer is inherently ambiguous. Just ask him if he did and that's a direction to attorneys. If you can, please, adhere to that. sk questions -- well, I'll rephrase it. Withdrawn. Don't ask questions in the negative. "You didn't do that, did you." What does yes mean? What does no mean? It is ambiguous.
(Continued on the next page.)

Q Other buyers were deemed unlikely based on this meeting; right?
I don't recall.
Q First bullet point. David Bonderman, unlikely; correct?
Unlikely.
Q Unlikely. That was my question.
David Einhorn, unlikely?
Yes.
Q Where it says "Donald Trump," it doesn't say "unlikely;" right?
Does not say unlikely.
Q So I want to --
MR. FERIS: I would like to move Exhibit 1003 into evidence, Your Honor.
THE COURT: I'll do whatever you want as long as you're finished soon. I feel like we're spinning on wheels here. Yes, it's in evidence.
(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number 1003 in evidence.)
MR. FERIS: nd at this time I would like to go back and do D 1002 in evidence as well, which I didn't do, Your Honor.
THE COURT: Granted. It's in evidence.

(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number D 1002 in evidence.)
MR. FERIS: Can I get P 0980 on the screen, please?
Q I want to talk to you about Morgan Stanley's reaction to the bids. nd you went over this document with the ttorney General recently.
MR. FERIS: Can we turn to page nine of the document, please?
Q This letter is signed by Donald J. Trump; correct?
I don't know.
Q That's what the letter represents; right?
That's what it represents, yes.
Q nd above Donald J. Trump's name it says "Trump cquisition LLC?"
Yes.
Q It doesn't say DJT Holdings LLC; right?
It does not.
Q It doesn't say DJT Holdings managing member; right?
No.
Q Same question with regard to Trump Organization Inc.?
No.
Q Same question to Trump Organization LLC?
No.
Q Same question with regard to Trump Endeavor LLC?

No.
Q Same question with regard to 401 North Wabash LLC?
No.
Q Same question with Trump Old Post Office LLC?
No.
Q Same question with 40 Wall Street LLC?
No.
Q Same question with Seven Springs LLC?
No.
Q nd same question with the Donald J. Trump Revocable Trust?
No.
Q None of those entities are listed there; right?
No.
Q Mr. Eric Trump is not listed on this letter either; right?
He is not.
Q nd neither is Donald Trump, Jr.?
He's not.
MR. FERIS: We can take this exhibit down.
Q nd you told us that that bid on July 29, 2014 was a nonbinding bid; right?
That's correct.
Q nd then based on the bids they received Morgan Stanley put together a bid summary presentation; yes?

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Yes.
Q nd it also put a script together of what it would tell potential buyers that submitted bids; right?
Yes.
MR. FERIS: Can we pull up D 1004?
Q This was sent to you, right, Mr. Cornwell?
Yes.
Q nd it says "attached is the bid summary and script." Right?
Yes.
MR. FERIS: Your Honor, I would like to move this exhibit into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number D 1004 in evidence.)
MR. FERIS: If we could scroll down, please?
Let's go to page five.
Q Do you see with where it says "Donald T. Trump?" I believe you meant "J" there, right?
Yes.
Q Yes, right.
Yes.
Q So he submitted a bid for 1 billion?
That's correct.

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Q nd it says that it was "subject to finalization and signing of all documents and approval by the NFL's member clubs?"
Yes.
Q So at this time nothing was final?
Nothing was final.
Q nd then it said he had a stated net worth of in excess of 8 billion?
Yes.
Q Correct.
MR. FERIS: nd let's go down to the script that you were going to speak about with the potential buyers. It's going to be on page 7.
Q Morgan Stanley at the time had an intention to tell President Trump that his bid was below several others in the process; right?
Yes.
Q But you plan to communicate to him that he could prevail during the diligence process if he could move up in value?
Yes.
Q So Morgan Stanley was encouraging President Trump to raise his bid if he wanted to win; right?
That he would have to raise his bid if he wanted to win.

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Q That he would have to?
Not encourage, but he would have to.
Q You were telling him to win he needed to raise his bid?
Yes.
Q nd Pegula, the ultimate buyer, you, Morgan Stanley, planned to tell him you bid enough to get into the next round, but "at the top of your range you were not the highest bidder?"
Yes.
Q So you were planning to communicate to Pegula that he needed to raise his bid -- that they needed to raise the bid to be ultimately successful; right?
t the top end of his range he was not the highest bidder. That's what we said.
Q Which means that to be successful he would have needed to raise his bid; right?
No.
Q So the person with the highest bid doesn't win?
Certainty of closing also matters.
Q But one of the factors is whether the bid is --
Yes.
Q -- high in value; correct?
Yes.
Q higher bid would have been beneficial to Morgan Stanley?
I don't understand the question.

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Q The higher the bid the higher the ultimate selling price; right?
The higher the bid the higher the -- yes.
MR. FERIS: Let's pull up D 1011, please. Let's go to page two of the document. Let's actually start with page three.
Q So at the top of page three you write an e-mail that says "have you given any of the NFL forms to the league yet;" correct?
Yes.
Q nd then you said "we should discuss the process of starting to get people vetted;" right?
Yes.
Q Then your e-mail is responded to saying "certain people had submitted the background forms; Pegula, the JBJ Group and the Kelly Group;" correct?
Yes.
Q Now, if we turn to page two you write back, "okay, I'd like to get Trump in as well. We don't have the signature page; correct?" That's what you wrote, right?
Yes.
Q So you wanted to get Trump's forms in; correct?
Yes.
Q You wanted President Trump as a bidder?
Yes.

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Q You wanted to keep him around?
Yes.
Q Even though he hadn't signed the final consent forms; right?
That's the signature page. That's what we're referring to. I wanted him to sign it, to sign the consent form.
Q The signature page of the background forms, right, you wanted him to?
The consent form.
Q He hadn't signed it?
He had not signed that.
Q So you wanted him as a bidder even though he hadn't signed; right?
I wanted him to sign it.
Q You told me right now that you wanted him as a bidder. That was your answer, right?
Yes. In order to be a bidder he needed to sign it.
Q Mr. Wayne Katz told you "as far as I know we don't have President Trump's" -- it says "Trump's," but I'm adding the "President Trump" as an honorarium, "background check authorization form and I'd be surprised if we ever get his financials?"
What page are you on?
Q I'm on page two.
Yes.

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Q nd you said "I'll talk" -- "we'll talk to him about it. We'll talk to him on Monday about it. He has asked we pre-check him with the league and that's what we want to do."
Yes.
Q So President Trump hadn't signed the forms; right?
No.
Q But you were still pursuing him as a bidder; right? You were getting him pre-checked with the NFL?
That's signing the forms.
Q You said he has asked we pre-check him, so that's what we're going to do; right?
Yes.
Q So you were pre-checking him even though the forms were not signed; right?
No.
Q That's not what the e-mail says?
There is no pre-checking without the signed form.
Q t this point you just told me that Trump hadn't signed the forms, but you were pre-checking him. "So that's what we want to do."
We want to pre-check him.
Q nd then you were told thereafter, "I hear Trump hasn't been doing anything in the data room;" right?
Yes.
Q So you were on notice that President Trump was not

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active in the data room; right?
Yes.
Q nd the data room is where a potential buyer receive all of their diligence materials; right?
That's correct.
Q When the bidder is not very active in the data room that means they're not really looking at those diligence materials; right?
Yes.
Q nd in your experience when a bidder is highly interested in a purchase, they're active in data rooms; correct?
Sometimes.
Q They want to know where their money is going; correct? Usually? Can we get a verbal response, sir?
Sometimes.
Q nd then you go on that despite him not being active in the data rooms, despite him not signing the background consent form on page one, you say "yes, still want to keep him around though." That's what you said; right?
Yes.
Q You still wanted to keep Donald Trump around; right?
Yes.
Q nd then you were told "understood, but that's why I think it's hard to get his forms;" right?
Yes.

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Q When you said "Trump asked to be pre-vetted so that's what we're going to do from his perspective. Better to find out if he is a no go now in a private fashion;" right?
Yes.
Q So he hadn't signed the forms, but you were pre-vetting him; right?
No.
Q "I've got some pretty good intel he has the money;" right? Yes?
Yes, I wrote that.
Q You wrote that.
So -- and you wrote "pre-vetting him." That's what it says. That's what we are doing; right?
No.
Q That's not what you wrote?
I wrote that, but not -- we -- not Morgan Stanley doing pre-vetting, no.
Q Did you write that inaccurately when you wrote it, sir?
I can't answer your question unless I can go outside the yes/no construct.
MR. FERIS: Your Honor, at this time I would like to move D 1011 into evidence, sir.
THE COURT: Okay. Five-minute warning and I hope --
MR. FERIS: I'm almost done, Your Honor.

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(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number D 1011 in evidence.)
THE COURT: Will you be able to finish in five minutes?
MR. FERIS: I'm going to try.
THE COURT: I may limit you. I mean, I just have to say, Mr. Kise, you pointed out that the cross examination was supposed to show there was a reliance because they weren't going to pick him anyway, but no other questions seem to be they really did want him as a bidder. I don't get where we're going with this. m I the only one --
MR. FERIS: Your Honor, this goes to show Morgan Stanley did want him as a bidder because it helped the process. The witness has testified that it --
MR. KISE: The witness is on the stand, Your Honor, so I don't really want to discuss this in front of the witness is all I'm saying. I just want to note again --
THE COURT: You don't have to do it again. You already did it. ll right. Here's what we'll do: Ten minutes. I really hope that you finish within the ten minutes. I'll ask the witness to answer quickly as best he can and I'll consider just stopping it at that point because I don't see the point.
MR. KISE: This never happens with the government,

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never. You never put them on the clock.
THE COURT: Maybe they ask questions in a different matter.
MR. KISE: They don't. They ask a lot of laborious questions and they drag us through a lot of exhibits and lots of things that take a lot of time. They're never questioned about anything they do. I just want to put that on the record because this is becoming a pattern, Your Honor. I'm sorry. Every time something takes a little bit longer with our side it's like you have to hurry up, you have to hurry up, you're on the clock. nd, respectfully, that's not fair to us. They spend all the time that they want and I just ask Your Honor to consider that. We're going to move as fast as we can with this witness. s I've told you before, there is -- no one in this courtroom wants to leave here and have this trial over sooner than me.
THE COURT: Let's continue.
Q re you aware that Mr. Holzschuh -- you are aware that Mr. Holzschuh encouraged President Trump to put his best offer forward; right?
I'm sorry, where are you?
Q I'm not on the document anymore. I'm asking you about your knowledge?
I don't recall.
MR. FERIS: Can we pull up D 1012, please?

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Q You checked off with Mr. Holzschuh about a conversation we had with Trump; right? You told him "how did it go last week."
Yes.
Q nd he said he will stay in the process; right?
Yes.
Q Followed by, "I encourage him to put his best offer forward and let the process work;" correct?
Yes.
Q So you were encouraging -- you, being Morgan Stanley -- President Trump to put his best offer forward; correct?
Jeff Holzschuh did.
Q On behalf of Morgan Stanley?
No.
Q You know President Trump is --
MR. FERIS: We can take that down.
Your Honor, I move this document D 1012 into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number 1012 in evidence.)
Q You know that President Trump is a real estate developer; right?
Yes.

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Q successful one; correct?
I don't know.
Q You know he has an interest in several commercial properties in New York?
I don't know.
Q Several golf properties around the world?
I don't know.
Q You were heading this deal and you don't know about Donald Trump's equity holdings?
I don't know whether he held equity or had a license -- he licensed his name. I don't know.
Q You would agree with me that you're aware of President Trump's a world renowned brand name; right?
I don't know.
Q You're not familiar with the Trump brand?
Yes.
Q So you do know about the world renowned brand?
I don't know. World renowned? I don't speak for the world.
Q You're aware there is value in that brand, sir?
I don't know.
Q You are aware that excluding the brand value Mr. Trump had a net worth of 5.7 billion in 2014?
I don't know.
MR. FERIS: Can we pull up on the screen what has

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been introduced into evidence as PX 730, please?
Q I'm going to represent to you this is Donald Trump's Statement of Financial Condition that the New York ttorney General moved into evidence.
If we can turn to page four, please. You see this says "assets" right here, sir?
Yes.
Q It lists "cash and marketable securities," right, on the first line?
Yes.
Q "Escrow and reserve deposits and prepaid expenses?"
Yes.
Q In the second line?
Yes.
Q "Real and operating properties;" correct?
Yes.
Q If we skip down after all the properties are listed out it says "partnerships and joint ventures net of related debt;" correct?
Yes.
Q Says "real estate licensing developments?"
Yes.
Q nd "other assets?"
Yes.
Q It doesn't list "brand" on there anywhere; correct, on

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this page?
I haven't read it in full, but I assume it does not.
Q You don't see it on there right now?
I don't see it.
MR. FERIS: We can turn to the next page.
Q Now, his net worth there is listed as 5.7 just to round or for time consistency as his net worth; correct?
Yes.
Q nd, again, we just went through that it's free of any brand value; right?
MR. FERIS: If we turn to the next page?
Q In the bottom paragraph at the top it says "pursuant to G P, this financial statement does not reflect the value of Donald J. Trump's worldwide reputation; however, the brand value has afforded Mr. Trump the opportunity to participate in licensing deals around the globe as reflected on the balance sheet therein." Do you see that?
I do.
Q nd then the final sentence of this says "the goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." Do you see that?
I do.
Q So this financial statement with a 5.7 billion net worth does not include brand, according to what we just read;

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right?
ccording to what we just read.
Q That would be a yes, right, according to what we just read?
Yes.
Q re you aware that Trump's brand value is up to $3 billion?
No.
MR. FERIS: Can we pull up PX 431, please?
Q nd I'll represent to you this is a brand -- a letter from Predictiv, that the value -- that values President Trump's brand.
MR. FERIS: If we can turn to the bottom of page two?
MR. FINKELSTEIN: Objection.
THE COURT: Go ahead.
MR. FINKELSTEIN: Hearsay. This exhibit is not in evidence and this witness has no foundation.
MR. FERIS: Your Honor, I haven't tried to move this exhibit into evidence. I'm just showing it into evidence.
MS. H BB : It's already into evidence. I brought it in through Michael Cohen.
THE COURT: I guess we'll accept that representation that it's already in evidence. Yes, no?

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MR. G BER: Was this introduced for the truth of the matter asserted at the time or just for notice purposes?
THE COURT: Might just be notice. nyone remember?
MS. H BB : I mean, I can look back, Your Honor. I believe we brought it in for the truth of the matter asserted, but it was solely -- I will tell you the part I brought in was the last sentence where it said the value only.
MR. W LL CE: We're happy to just have our objection noted and keep it moving.
MS. H BB : Yes, we can keep it moving.
THE COURT: I don't know what this witness has to do with this, but okay. Go ahead. Objection overruled without prejudice.
Q Do you see where it says: Based on the information provided it was concluded that the value of the Trump brand was in the 2.8 to $3 billion range?"
I do see that.
Q You would agree with me that 5.7 plus 3 billion is 8.7 billion?
Yes.
Q nd that's in excess of 8 billion?
Yes.
MR. FERIS: Your Honor, will the Court take judicial notice that 5.7 plus three billion is 8.7 billion?

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THE COURT: I hereby take judicial notice of it.
Q Just to remove all room for doubt, Trump didn't actually buy the Bills; correct?
He did not.
MR. FERIS: If I could have one moment to confer with Counsel?
THE COURT: Sure, go ahead.
(Whereupon, there is a pause in the proceedings.)
MR. FERIS: No further questions, Your Honor.
THE COURT: Will there be any redirect?
MR. FINKELSTEIN: No, Your Honor.
THE COURT: That's that. The witness is excused, and I'll see you all at 2:15.
MS. H BB : Your Honor?
THE COURT: Wait, wait. Don't go away.
MS. H BB : I just have a housekeeping matter.
THE COURT: Well, the witness is excused.
What is the housekeeping matter?
MS. H BB : Thank you, Your Honor. My far smarter associates have corrected some exhibit numbers that were in the record wrong when I cross examined Michael Cohen, so I just wanted to clean it up and make a record. I showed them. If I could just put that on the record quickly?
THE COURT: How long about will it take?
MS. H BB : Two seconds.

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Record page 2356, exhibit on the record was D 995. What the record should reflect is D 955.
Record 2361, this is not really relevant. D 958-3 is on the record. It should just be D 958, no -3.
2364 record page. PX 341 is the exhibit on the record. It should be D 984.
nd the last one is record page 2400. Exhibit on the record is PX 987. It should reflect D 988.
I'm -- I will give this to the ttorney General, as well, so if they have any objection they can put it on.
THE COURT: ny objections you can raise later.
MS. H BB : Thank you.
THE COURT: For the time being we'll assume that's all correct. ll right. Have a good lunch, everyone.
(Whereupon, there is a luncheon recess in the proceedings.)
Transcript continues on the following page....

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F T E R N O O N S E S S I O N
* * * * *
THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Please be seated and come to order.
THE COURT: I know you're ready to call your next witness because the guy is standing there walking around like that. Would you like to call your next witness?
MR. H REN: Yes, we would. The people call David Orowitz. I understand Mr. Wallace has one matter to place on the record before we begin.
MR. W LL CE: Cleaning up from the last examination, there was a question as to whether Plaintiff's Exhibit 431 had been entered into evidence. This was the --
THE COURT: Right.
MR. W LL CE: Valuation. It was sought to be introduced during Mr. Cohen's testimony. The objection was sustained. I don't know that it needs to change anything else on the record, but since I just wanted it to be reflected, that that's where we understood it came out.
THE COURT: Okay. So we all agree it is not in evidence. Thank you.
MR. H REN: We call David Orowitz.
THE COURT: Can we get Mr. Orowitz.
THE COURT OFFICER: Witness entering.

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D V I D O R O W I T Z , a witness called by the People, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:
THE COURT OFFICER: State your full name and your business or home address on the record.
THE WITNESS: David Orowitz.
THE COURT: You are going to have to talk a lot closer to the microphone.
THE WITNESS: Okay.
THE COURT: Keep your voice up, of course.
THE WITNESS: David Orowitz. 600 West 111th, New York, New York.
THE COURT: Please proceed with the questioning.
MR. H REN: Thank you, Your Honor.
DIRECT EX MIN TION
BY MR. H REN:
Q Good afternoon, Mr. Orowitz. My name is Eric Haren. I am an attorney with the ttorney General's office. Thank you for being here.
Can you, please, describe your educational background after high school?
I went to Hamilton College for undergraduate and I went to the Wharton School at University of Pennsylvania for my M.B. .
Q Do you hold any professional licenses?

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No.
Q Do you have any professional certifications?
No.
Q Can you, please, describe your employment history after college?
fter undergraduate, I worked at Kaiser ssociates which was a strategy consulting firm. Then I went for my M.B. . for two years, then went to the Trump Organization for eight years, and then after that and since then, I've worked at L&L Holding.
Q t what? Sorry. I didn't hear that.
L&L Holding.
Q Thank you. Can you describe just in general terms your history of working for the Trump Organization?
I joined as a summer intern in between my two years of my M.B. . and then I joined full time at the end of the summer after I graduated from business school.
Q nd approximately what year was that?
2008.
Q So you joined as a full-time employee of the Trump Organization in 2008?
Correct.
Q Okay. nd who offered you the full-time position at the Trump Organization?
Donald J. Trump, Jr.

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Q Could you walk us through your titles at the Trump Organization from 2008 until when you left?
When I joined, I was VP of acquisition and development and when I left, I was SVP, senior vice-president of acquisitions and development.
Q There came a time when you were promoted from vice-president to senior vice-president?
Yes.
Q Who offered you that promotion?
It was the Trump -- the Trump kids. I don't remember specifically who.
Q So by kids, who are you referring to?
Sorry. Donald Trump, Jr., Ivanka Trump and Eric Trump.
Q Thank you. Who did you report to when you worked for the Trump Organization?
I reported to Donald Trump, Jr. and Ivanka Trump and Eric Trump.
Q nd was that reporting structure the same throughout your tenure at the Trump Organization?
Yes.
Q pproximately when did you leave your employment at the Trump Organization?
I left in October of 2016.
Q Is it correct that you frequently met or spoke with Donald Trump, Jr., Eric Trump and Ivanka Trump during your

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employment at the Trump Organization?
Yes.
Q Speaking generally, what projects did you work on with Ivanka Trump?
I worked on the Old Post Office, the acquisition and financing of Doral, the refinancing of Trump Chicago, and several brand licensing deals around the world.
Q nd same question for Eric Trump.
Eric Trump, I worked on and off with him, but I would say one of the things I worked with him on was the retail at Trump Chicago and I'm sure a number of other things while I was there.
Q nd same question for Donald Trump, Jr.
With Donald Trump, Jr., I worked on some of the leasing at the Old Post Office and some of the Trump India brand licensing deals.
Q Who do you understand to have worked in the accounting department while you worked at the Trump Organization?
llen Weisselberg, Jeffrey McConney, Donna Kidder, I believe Patrick Birney.
Q nd in terms of the physical layout of the office, where was the accounting department located?
The accounting department was on the 18th floor.
Q Where was Mr. Weisselberg's office located?
On the 18th floor.

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Q nd where was your office?
On the 17th floor.
Q Thank you.
Do you recall any instance in which you were asked by llen Weisselberg for valuation information in connection with a conversation with Forbes Magazine?
Yes.
Q What do you recall about that?
I recall that there were conversations going on with Forbes about Mr. Trump's net worth in relation to the rankings of the world's richest people and that he had asked me to have a conversation with Forbes about one or maybe more assets as to kind of what the value of those assets might be.
Q In connection with those conversations, did you have an understanding of Mr. Weisselberg's objective?
Yes.
Q What was your understanding?
To persuade Forbes that some of the assets were worth more than what they originally were discussing valuing them at.
Q Did you have any other understanding about Mr. Weisselberg's objective?
Could you clarify the question, please?
Q Sure. Did you have an understanding about Mr. Weisselberg's objective in connection with Mr. Trump's net worth?

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That his goal was for it to be represented higher on the listing.
Q Thank you. During your time at the Trump Organization, did you ever have an understanding about a report on Mr. Trump's net worth?
Could you clarify what kind of report you mean?
Q financial statement about Mr. Trump's net worth.
Yes.
Q How did you gain that understanding?
There was a transaction that I was working on where he needed to provide a statement to his net worth.
Q Which transaction was that?
It may have been more than one, but I know that it was in relation to the Old Post Office.
Q When you say "in relation to the Old Post Office, can you be more specific about what you mean?
It was in relation to when we put the RFP response together in reaction to the original request for proposals. We had to demonstrate financial wherewithal and his statement was needed for that purpose.
Q Thank you.
MR. ROBERT: Your Honor, a continuing objection to this line of questioning. The RFP was well outside the statute of limitations.
THE COURT: Duly noted. Usual ruling.

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Q Mr. Orowitz, I would like to change topics to the Doral transaction.
Do you have a general recollection of when the Trump Organization purchased the Doral property and obtained associated financing?
Yes, it was generally in the early 2010s.
Q What was your role in that process?
I was involved with putting together the underwriting. I was involved with the 1031 auction or that may not be what it is called, the bankruptcy auction because we were buying another bankruptcy estate and I was involved in the financing.
MR. H REN: I'd like to have marked for identification PX 3243. I would like to pull it up on the screen.
Q Mr. Orowitz, the document on the screen, as you will see on the first page, begins with an e-mail from Ronnie Levine to Ivanka Trump and in the e-mail address, it states that Ronnie Levine is from meridiancapital.com and the e-mail is forwarded to you. Do you see that?
Yes.
Q Can you describe the role of Meridian Capital in connection with the Doral transaction?
My recollection is that they were helping to find potential lenders.
Q Helping meaning they were -- were they engaged by the

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Trump Organization to do that work?
I'm not sure if they were formally engaged contractually, but they were definitely engaged in practice.
Q They were assisting the Trump Organization in identifying potential financing?
Yes.
Q nd focusing in the e-mail from Ronnie Levine in the middle of the page, do you see where it states, "heard back from Blackstone a little while ago and they are a pass on the deal"?
Yes.
Q What does that indicate to you?
It indicates that Blackstone was not interested in providing a loan for the acquisition of Doral.
Q nd there's a reference in the second paragraph to getting information to someplace called Inbursa. Do you see that?
Yes.
Q Do you have an understanding of what that refers to?
I believe this was another financial institution that was a potential lender for Doral.
Q nd there are other references here to Macquaire, Criterion, Colony, Baupost and HSBC.
It's your understanding that those are potential sources of financing?
Yes. I don't recall at the time all of them being

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involved, but yes, based on this e-mail, that appears to be the case.
Q There is a question in the e-mail on the first page that reads, "Have you received any feedback from DB."
What do you understand that to be a reference to?
I would presume this was asking whether Meridian heard back from DB about their interest in the loan.
Q DB, is that Deutsche Bank?
Yes.
Q Moving to the top of the page, there is a response from Ivanka Trump that reads, "I actually spoke to Todd Harrison at Colony today (I know Todd through Jared as well). We are partners on another deal together. He said that we wouldn't do a deal with them on the debt side as they are too expensive for what we'd be looking for (low teens)."
What do you understand "low teens" to refer to in the context of this e-mail?
I would assume it refers to the interest rate.
MR. H REN: Your Honor, I move this exhibit into evidence.
MR. ROBERT: Your Honor, continuing objection on statute of limitations and objection to this whole line of questioning.
THE COURT: Overruled, but I will consider it a continuing objection.

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MR. ROBERT: Thank you.
THE COURT: Okay. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3243.)
MR. H REN: Moving to a different document. This is Plaintiff's Exhibit 3244.
Q Mr. Orowitz, do you recognize this set of e-mails?
I don't remember it, no.
Q But it does appear to be an e-mail chain involving you in the middle of the first page?
Yes.
Q nd looking at page one, there is an e-mail from again Ronnie Levine at Meridian Capital to Ivanka Trump that copies you. Do you see that?
Yes.
Q The e-mail states, "Citi has all the info on the deal, but I don't think they are going to make an offer." What do you understand that to refer to?
I would presume that Meridian had sent over due diligence materials and offering memoranda related to the transaction and that Citi was not interested in being a lender.
Q City refers to?
Citibank.
Q gain, on page one, there is a statement that reads, "They might consider a low-leverage first mortgage, but it would

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be sized to a ten percent debt yield on the in-place cash flow. Even that would be a stretch for them."
Do you have an understanding of those sentences?
Yes.
Q What's your understanding?
Debt yield is the percentage of the assets or the debt that proceeds, so it is the income divided by the debt. So this is basically saying that they would only lend ten times whatever the current cash flow or income was of the asset.
Q Continuing that same e-mail, there's the next paragraph reads, "I spoke with Loancore early last week. My brother-in-law works at Jefferies and is on the JLC credit committee. This transaction is too large for them and they are generally not looking to do deals with large renovation components."
What's your understanding of that information?
My interpretation of it is that they had reached out to Loancore and Loancore wasn't able to do loans this large or loans on assets that required investment in improving them.
Q What is Loancore?
I'm not familiar with Loancore.
Q Do you have an understanding what Loancore is?
-- I believe they are a real estate lender.
MR. H REN: I move Exhibit P X 3244 in evidence.
MR. ROBERT: Objection; statute of limitations.

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THE COURT: I think we've been over this many times. You still feel that you need to object every time even though it is a continued objection because it is a document, not testimony?
MR. ROBERT: Yes, sir.
THE COURT: I'm learning. ll right. Do what you feel you have to do. Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3244.)
MR. H REN: I've handed or the witness has been handed plaintiff's Exhibit 3247. That document is also up on the screen.
Q Mr. Orowitz, do you recognize, if you could take a moment to look through it, the e-mail and the attachment that follows.
(Witness reviewing document.)
I don't recognize it specifically, no.
Q Do you see there at the bottom of the first page is an e-mail from Ivanka Trump to Enrique E. Morelos Zaragoza on November 28, 2011?
Yes.
Q nd the e-mail is then forwarded to you?
Yes.
Q nd the e-mail from Ms. Trump refers to "Inbursa's term sheet" at the beginning of the first paragraph. Do you see

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that?
Yes.
Q nd then you can see at the top of the first page, there's an attachment entitled "inbursatermsheet.docx"?
Yes.
Q If you could look then to page -- beginning on page three, do you see a document that appears to be a term sheet from Inbursa Grupo Financiero?
Yes.
Q It refers to Donald Trump as the sponsor?
Yes.
Q nd it refers to the sponsor as the guarantor?
Yes.
MR. H REN: I move Plaintiff's Exhibit 3247 into evidence.
MR. ROBERT: Statute of limitations and relevance.
THE COURT: Overruled. Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3247.)
Q Mr. Orowitz, we're going to move to some information from another potential lender. We're looking at Plaintiff's Exhibit 3231.
MR. H REN: Could we pull down -- I have the wrong document in front of me, so let me try to fix that. One

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moment, Your Honor.
THE COURT: Yes.
MR. W LL CE: Your Honor, I apologize for interrupting Mr. Haren. I want to note for the record that there appears to be no attorney right now for Donald Trump, for Mr. Weisselberg or for Mr. McConney and I just want to know if the defendants have made some arrangements for this absence, but I don't believe either Mr. Robert or Mr. Kise represent those individuals.
MR. KISE: I certainly represent Donald Trump whether it says so on the docket or not. I mean, that's been obvious since the beginning, that I'm the lead counsel and if you want to ask him next time he's here, you can ask him, but there's no question as to that. I think Mr. Gabra is here. He may be in the back watching, but I think -- I mean in the video room watching, but I'll confirm that.
For Mr. Weisselberg and McConney, I clearly do not represent Mr. Weisselberg and Mr. McConney, but I can check on that momentarily. We can continue the proceeding and I can -- if you'll allow me to go check, I could go do that.
THE COURT: Of course.
MR. KISE: Thank you, Judge.
MR. H REN: You could put the document you've been handed to the side. We will move to a different one and see if we can correct that issue.

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MR. KISE: He is now here, Your Honor. I appreciate the concern of the government for representation.
MR. W LL CE: We want to keep the record clean.
Q So Mr. Orowitz, you have in front of you Plaintiff's Exhibit 3232. You see on the top of the first page, there's an e-mail from someone named Steve Harvey to you and Ivanka Trump copying Jacob Turner and some other people and the e-mail signature states that Steven L. Harvey is an executive vice-president at CSG Investment, Inc.
Do you have an understanding as to who Mr. Harvey is in the context of this e-mail?
I don't have a recollection of it, no.
Q re you familiar generally with Beal Bank and CSG Investments?
Yes.
Q What is your understanding of those entities?
They're affiliated entities that are both owned or partially owned by ndy Beal.
Q nd then are they potential sources of financing?
Yes.
Q So the e-mail states, " ttached is a redraft of the term sheet based on our conversation today. If you find this acceptable, the next step for us will be a loan application, which I am working on right now."
nd you can see that there is an attachment entitled,

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"Doral term sheet 111114 "which I assume is November 11, 2014 -- November 14, 2011.
Is it fair to say that this document represents a transmittal of a term sheet with Beal Bank or CSG Investments regarding the Doral property?
Yes.
Q If we could take a look at the attachment. Do you see that this document appears to be such a term sheet?
Yes.
Q It contains an interest rate term of LIBOR plus 5.5 percent?
Yes.
Q nd do you see that it provides a floor rate of two percent?
Yes.
Q nd there's a default interest rate of five percent above the interest rate?
Yes.
Q nd on page three, there are a series of additional fees including an upfront fee, a breakage fee. Do you see those?
Yes.
MR. H REN: Your Honor, I move Plaintiff's Exhibit 3232 into evidence.
MR. ROBERT: Objection. Statute of limitations and

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hearsay and relevance.
MR. H REN: Your Honor, this is a term sheet for a potential loan received by Mr. Orowitz and Ivanka Trump at the Trump Organization. They are right there in the "to" line in the e-mail.
MR. ROBERT: It is not prepared by the witness. It is prepared someone. It is an out-of-court statement and it was produced by whoever Beal is. I don't know who that is.
MR. H REN: It is a bank that offered terms to the Trump Organization for a potential loan and I'm introducing it for notice for the terms that were offered.
MR. ROBERT: Notice of what to whom? Notice that there was a term sheet, but not any of the contents of the term sheet including the amount or the interest rate, correct?
MR. H REN: The term sheet is contained in the document beginning at page two, portions of which I read to the witness and that do specify the interest rate, loan term, loan amount and other terms.
THE COURT: It's in simply for the notice of what's in it, not for the truth of the statements asserted.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3232.)
MR. H REN: Your Honor, I have another exhibit, but before I show it to the witness, it's my understanding that

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it is still subject to a confidentiality designation under the protective order, so I wanted to hand a copy up to the Court and to counsel.

THE COURT: Is there an issue about showing this to the witness? Mr. Haren, is that a threshold question?

MR. H REN: I don't think there should be an objection. It is a perfectly appropriate document that could be shown to the witness and support in kind to the other documents I showed the witness, but just want to make sure -- the protective order allows that the Court can order that I can show it to him, so I think that that would be appropriate.

THE COURT: I'll give them, defendants, a moment to look at it.

MR. KISE: Is the question as to the protective order, the confidentiality order?

THE COURT: Yes.

MR. H REN: Yes.

MR. KISE: No, there is no objection on that ground. I could come up with a lot of other objections, but not on that.

THE COURT: You probably already have. You can show it to the witness.

MR. H REN: Thank you, Your Honor.

Q So, Mr. Orowitz, you could see on the first page of

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Exhibit 3233 that there's an e-mail exchange involving you and Ivanka Trump and Jacob Turner and Steve Harvey at CSG Investments. Do you see that.

Yes.

Q The e-mail states in the second line, "I understand that there is no need to discuss the $130 million comment on the markup (CSG is not going to get to that advance level)."

Do you have an understanding of what that line indicates?

Yes, I believe it refers to the loan proceeds that they would be willing to loan.

Q The e-mail also states, "We had a number of discussions" --

MR. KISE: Your Honor.

THE COURT: Hold on.

MR. KISE: So the confidentiality, are we asking him questions about a document that's not in evidence that he can't authenticate or can he? I don't know. I did not see that he did. Maybe he did.

Q Mr. Orowitz, did you receive this e-mail?

I don't -- I don't recall receiving it.

Q Do you see in the "to" line that it states "David Orowitz"?

Yes.

Q Do you have any reason to doubt that you received this

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e-mail?

No.

Q Do you understand that it contained responses from CSG Investments concerning potential loan terms?

Yes.

MR. H REN: Your Honor, I move to admit Plaintiff's 3233 in evidence for notice.

MR. ROBERT: I want to be clear with this for notice. Notice of what? I mean, if you intend to try to show later with this document and the other document that there's certain interest rates that are here, that's not notice. So let's just be clear. You want this notice of who of what?

MR. H REN: I want it for notice that Ivanka Trump and David Orowitz at the Trump Organization were expressly advised about potential loan terms from Beal. That's what that document provides them notice of.

MR. ROBERT: Not any of the terms of the loan because the terms of the proposed loan are hearsay.

MR. H REN: I don't understand how they are hearsay if they were expressly advised what the terms would be.

THE COURT: They are not hearsay. I don't know what you mean by that.

MR. ROBERT: statement coming from Jacob Turner who is not a party, sending an e-mail, making a statement of

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potential terms, that's quintessential hearsay.

THE COURT: It is not being introduced to prove the truth of the contents, just that the recipients were notified that this sender was willing to do these terms. Is that what I --

MR. H REN: Yes.

MR. ROBERT: That goes to the truth of the matter asserted. We are now interpreting that to mean that the lender was going to go ahead on these terms. That, in essence, is the truth of the matter asserted. If it is a question of did you receive a document that said that 10:30 a.m. central standard time, that's one thing, but Your Honor's hypothetical goes to the truth of the matter asserted.

THE COURT: So just to make sure I understand your point, we don't -- does your point boil down to we don't know that this sender really would have done these --

MR. ROBERT: Correct. Correct.

MR. W LL CE: It constitutes an offer which is another reason that it can be admitted on its own for the purposes that there was an offer made. It doesn't need to show whether the offer was going to be closed, whether everything is going to proceed from here, we are not going -- that was down the road.

THE COURT: I don't -- when you say "offer," you

mean binding as in we learned in contracts, an offer is binding?

MR. W LL CE: Not binding.

THE COURT: So, then, it is not really an offer.

MR. W LL CE: That's fine, Your Honor.

MR. H REN: I could ask a slightly different question.

THE COURT: ll right. Withdrawn.

Q Mr. Orowitz, when you received this e-mail, did you understand -- did you form an understanding that Beal Bank was responding to potential loan terms with the responses that are here indicated?

I don't remember receiving this specific e-mail at that time.

Q Do you --

THE COURT: I think you said you have no reason to doubt that you did, right?

THE WITNESS: No, no reason.

THE COURT: Okay.

THE WITNESS: Your Honor.

Q Do you have a general recollection of engaging in -- withdrawn.

MR. H REN: Just want to be clear, is the document in evidence for those purposes or is it --

MR. ROBERT: If it is noticed that an e-mail was

received, but none of the contents -- all of the contents of the notice are hearsay.

MR. H REN: I mean, just to be clear on the question of hearsay, it's not a truthful fact that it is being asserted by the statement. It is a market term that is being offered. I don't think it is hearsay at all. I don't think it is being offered for its truth. It is being offered to show what a third-party bank offered and notified the defendant organization was the subject of their offer.

MR. ROBERT: That's the definition of the truth of the matter asserted because you want to try to bootstrap that there were other offers, that these other interest rates, these interest rates differed than the ultimate interest rate and you're going to connect those dots or attempt to connect those dots.

What I'm saying is the underlying substance of what's contained here is hearsay. If you had the ability of the time is expired, someone from the bank to come in here and explain something, but that's not what we have. We have a document that you're trying to introduce from a witness who doesn't recall receiving it.

To Your Honor's point, he doesn't dispute that he probably got it because he is on the e-mail exchange, but the underlying substance of this and of the earlier e-mail are all hearsay.

(Continued on the next page.)

MR. W LL CE: Your Honor, if I could just clarify my point about it. It's an offer to constitute a verbal act under 8.47 under the rules of evidence and that even if it's not a binding offer it is contractual term.

By making this offer we are interested in establishing and making the offer to the Trump Organization. nd so that is how the -- that's how Mr. Haren is offering to use this document.

nd just to go back to one other point. This came from the Trump Organization, so any issues with authenticity because this was produced in discovery.

MR. ROBERT: I'm not questioning -- so I didn't think it came from us, this exhibit that's here, but I take your word for it.

MR. W LL CE: I'll just clarify that's the production stamp that the Trump Organization used for civil discovery in this action as opposed to TTO is from the underlying investigation.

MR. ROBERT: I'm just saying nonetheless if you want to introduce something as an offer, the person that made the offer has to come in and say here was the offer, here are the terms, not the witness who is looking at the document coming from a third party relaying terms or potential terms of a deal.

THE COURT: ll right. Give me a moment.

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(Whereupon, there is a recess in the proceedings.)
THE COURT: Mr. Wallace, what is -- was the evidentiary rule you just referred to?
MR. W LL CE: I believe 8.47 Verbal ct.
THE COURT: 8.47 of?
MR. W LL CE: I'm --
MR. G BER: This is Section 8.47 of the Bench Book on New York Evidence rticle 8 rules. I think it's incorporated as the rules, but I'm reading it off of the New York courts website. I think it is -- it comes from a line of Court of ppeals cases. I'm not sure if it's codified. I believe 8.47 is the citation here.
THE COURT: Okay. Thanks.
Is plaintiff willing to I think go along with Mr. Robert's view that it can be admitted only for the fact that this was sent -- and by the way, I think we learned in law school back decades ago there is a presumption that something mailed to someone, has been received by the recipient, I'm assuming that should be at least the same with e-mail. So anyway, plaintiff, are you willing to accept that as I just --
MR. W LL CE: I think it essentially does get us to the same place. I think it's fine.
THE COURT: I'll take that as a yes?
MR. W LL CE: s a yes.

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THE COURT: It's admitted in evidence over the hearsay objection and only for the purpose that the recipients David Orowitz and Ivanka Trump received this e-mail.
MR. ROBERT: That would be the same ruling for the previous e-mail as well which was the same objection?
THE COURT: I think that's correct.
MR. ROBERT: Thank you, sir.
THE COURT: Okay. Let's move on.
Q Mr. Orowitz, we saw earlier in Plaintiff's Exhibit 3243 that there was a question posed by Meridian Capital about the status of any discussions with DB. Do you generally recall that? I asked you about it in the beginning of the discussion.
I recall discussions with DB.
Q I want to hand you a document that's been marked as Plaintiff's Exhibit 3111.
nd Mr. Orowitz, you see at the top of this e-mail is an e-mail from you to Marc Levine, David Goodman and some other folks at Deutsche Bank with llen Weisselberg copied?
Yes.
Q I'd like to direct your attention to the e-mail that is on the second page. It goes from the first page on to the second page from Marc Levine to Ivanka Trump and it reads: "Refers to an investment memo and projections for the Doral Golf Resort and Spa in Miami, Florida." Do you see that?

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Yes.
Q Do you have an understanding in the context of seeking financing for the Doral property what the phrase "investment memo" refers to?
Yes.
Q nd what's your understanding?
It's a presentation that gives key information to potential lenders to explain general terms around what the plan is for the development and what the financial projections are in order for them to evaluate it.
Q nd in the e-mail in the first page from Ms. Trump she writes that she's copied you on the e-mail and you'll be putting together all the information. Do you see that?
Yes.
Q I'll put that to the side for a moment and I'll hand you Plaintiff's Exhibit 3112.
Mr. Orowitz, do you recognize this document as a chain of e-mails involving you, llen Weisselberg and Ivanka Trump?
I don't remember this e-mail specifically.
Q But looking at it here today do you have any reason to doubt it's an e-mail chain involving you, llen Weisselberg and Ivanka Trump pertaining to the Doral transaction?
No.
MR. H REN: Move to admit Plaintiff's Exhibit 3112.
MR. ROBERT: Objection. Statute of limitations.

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THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3112 in evidence.)
Q The exhibit begins on page one with an e-mail from Marc Levine at Deutsche Bank to you. Do you see that?
Yes.
Q nd it reads: "David, received your e-mail last night regarding the due diligence checklist. I checked with the rest of the team and we are available after 10:30 after a call. Let me know what time works for you and we will send around a dial in for the call."
So you then forwarded that e-mail to llen Weisselberg and asked him if he could do 10:30 for the call; is that right?
Yes.
Q nd is it fair to say you were trying to ensure llen Weisselberg was available to join a call with you and Marc Levine from Deutsche Bank on or about this date?
Yes.
Q I'd like to show you another document, Plaintiff's Exhibit 3117.
Mr. Orowitz, just directing your attention to the first page of the exhibit. Do you recognize it to be a calendar invitation ?
Yes.

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Q nd the original appointment in the calendar invitation includes you and you forwarded it to llen Weisselberg; is that right?
Yes.
Q nd looking at the attendees in the original appointment, do you see that there are two names, Mason Parker and William Frauen. Mr. Parker is on the second line and Mr. Frauen is on the third line?
Yes.
Q nd the information beginning on page two of the exhibit is a diligence list pertaining to the Doral Golf Resort; is that right?
Yes.
MR. H REN: Your Honor, I move the Exhibit 3117 into evidence.
MR. ROBERT: Objection. Statute of limitations and the attachment is hearsay.
MR. H REN: nd I'm fine moving into evidence the calendar invitation. I have no need for the remainder of document.
THE COURT: Okay. Overruled on the statute of limitations grounds and it's in evidence just for the invitation.
MR. ROBERT: So then that will come off the exhibit and I guess the question of the witness to the attachment

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will be stricken since it's not in evidence?
MR. H REN: Why don't we make it easier.
Q Mr. Orowitz, you were provided a copy of this diligence list in connection with the calendar invitation. Is that fair?
nd just so we don't have to generate another exhibit solely for the fact you were provided we could just admit it for that purpose.
That appears to be attached to the invitation.
THE COURT: Okay. That resolves that.
Q nd so if we could go back to Exhibit 3111.
t the top of the page we talked about this e-mail a minute ago, but this is the same day as that calendar invitation, November 18, 2011, and you wrote to Mr. Levine: "Marc, it was good speaking with you earlier today. Please find a link to a folder containing the due diligence materials that you requested." Do you see that?
Yes.
Q Did you have a call with Mr. Levine from Deutsche Bank on or about November 18, 2011?
From this e-mail it appears so.
Q Was Mr. Weisselberg on the call?
I don't recall the call.
Q On the November 18, 2011 phone call did anyone from the bank, meaning Deutsche Bank, convey what interest rate the bank might seek for a commercial real estate loan regarding the Doral

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property?
I don't recall the call.
Q Let's see if a document refreshes your recollection and I'll admit -- I'd ask to admit Plaintiff's Exhibit 3111.
MR. ROBERT: Objection. Even if this refreshes the witness's recollection it will be hearsay what Deutsche Bank may have told him.
MR. H REN: I'm speaking about the e-mail where Mr. Orowitz wrote: "Marc, it was good speaking with you earlier today." I'm not talking about the content of any phone call at this point.
MR. ROBERT: I thought the question was I thought on the November 18, 2011 phone call did anyone from the bank, meaning Deutsche Bank, convey what interest rate the bank might seek for a commercial real estate loan regarding the Doral property so whatever they may have said to this witness is hearsay.
MR. H REN: I'm asking to admit the document that was the precursor to that question and I will have another document that may refresh him.
MR. ROBERT: But even if it refreshes his recollection as to what the bank says, it's still hearsay.
MR. H REN: The e-mail that Mr. Orowitz said when he wrote "Marc, it was good speaking with you earlier today," this is an e-mail that he wrote. The witness is

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sitting here, he testified --
MR. ROBERT: I think we're talking about two different things.
MR. H REN: That's right. We are talking about two different things. I haven't shown him the document that may or may not refresh his recollection. That's not what I move to admit. I move to admit Plaintiff's Exhibit 3111.
MR. ROBERT: So you're not going to ask him what the conversation was with Deutsche Bank? If you're not going to ask him what the conversation was I have no objection.
MR. H REN: This may --
MR. W LL CE: If we have to lay out how we're doing this we will also say that the defendants are receiving multiple offers from different banks and they choose a bank offer that has a different term. That is an appropriate use of them having learned of the other offers from the other banks.
So we're saying putting things in for notice, but it is notice because we want to show what the defendants understood when they were making decisions about which loan to select.
MR. ROBERT: nd, Your Honor, that proves my point. This is for the truth of the matter asserted. If they wanted to call people from these institutions, they very

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well could have in their case. They didn't. They're now trying to use hearsay documents and hearsay testimony to make up for the deficiency in their case.

MR. W LL CE: bsolutely not.

MR. ROBERT: I'm still speaking, Mr. Wallace. It is inappropriate.

MR. W LL CE: It is whether or not the defendants had notice of the other terms of what were being offered and then selected another loan.

THE COURT: Now, what the banks would actually have lent the money at these rates I think that's a question of fact.

MR. ROBERT: Then you need someone from the bank to testify; otherwise, it's completely irrelevant. If someone is saying here -- to allow this to come in now without the bank saying they would have done it is completely irrelevant I think because what someone didn't intend to do can't show reliance, can't show any of the elements they need to prove their case. So just because their bank may have sent an e-mail about something without the bank explaining what that's about, it's completely and utterly irrelevant.

They need it for the purpose of the bank made an offer at X and the defendants decided not to do it. They can't do that through hearsay.

MR. W LL CE: I don't know why we can't show that

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they got an offer and decided not to go with it through their own documents and witnesses.

MR. ROBERT: You have to bring in a witness who actually made the offer. I don't see these documents saying -- first of all, even if they said there was an offer you still need the person that made the offer. You're conflating notice with the substance of it. If you want to show they got an e-mail and there was words on the page of an e-mail, I can't fight you on that. But underlying substance of what the potential offer was and what their notice of that was that's hearsay.

MR. H REN: So I think we're arguing about an e-mail that's not even in front of us.

MR. ROBERT: It's not about the e-mail, Mr. Haren.

MR. H REN: If I can finish, please, Mr. Robert.

The e-mail that's in front of us is a statement from Mr. Orowitz who at the time was an employee of the Trump Organization that "it was good speaking with you earlier today" and in response to a series of other e-mails involving Mr. Orowitz and Ms. Trump who was also an employee of the Trump Organization at the time. That's all this e-mail is. That's what I move to admit. I don't understand the debate we're having here. It's not about this e-mail.

THE COURT: ll right. So objection overruled to the extent we're talking about what Mr. Haren just said.

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MR. H REN: So I'd like to bring up Plaintiff's Exhibit 3107, which is being shown to the witness solely for the purpose of refreshing his recollection if it does.

Q Mr. Orowitz, do you see on the screen an e-mail from William Frauen to Richard Byrne and Mason Parker?

Yes.

Q nd Richard -- just William Frauen and Mason Parker were both on the calendar invite we looked at a few minutes ago?

Yes.

Q The e-mail states:

"Had call with them this morning (not Ivanka or Donald was llen) and some other guy-David Orowitz I think."

Do you see that?

Yes.

Q nd it continues: "We told them" -- and this is in the fifth paragraph down, and I realize some of the wording in the e-mail is in shorthand. "We told them we are working two angles:) MTG plus mezz and B) whole loan to Levfin investors. They asked what whole loan costs, we said project development pricing is around ten PCT." Do you see that?

Yes.

Q Does that refresh your recollection as to any loan pricing conveyed by Deutsche Bank to you on the phone call of November 18, 2011?

No, it doesn't.

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Q nd directing your attention to information further down in this e-mail. It states: " lso suspect others" -- let me ask you a question before that.

Do you have a recollection of Mr. Weisselberg conveying any information regarding Mr. Trump's personal financial statement on the November 18, 2011 call?

I don't.

Q nd so if you take a look at Exhibit 3107 and you look down where it states -- this is in the second to last line -- "also suspect others may be thinking/exploring direct Donald GNTY or other asset pledge as llen again mentioned he sent you personal statement." Does that refresh your recollection as to whether Mr. Weisselberg conveyed any information about Mr. Trump's personal financial statement on that November 18, 2011 call?

It does not.

Q You can set that to the side.

Putting aside any particular phone call, were you generally aware whether Deutsche Bank offered an interest rate of approximately ten percent on a nonrecourse commercial real estate loan for the Doral property?

I don't remember that.

Q Do you have a general recollection of any difference between terms offered by the commercial real estate arm of Deutsche Bank and the private wealth arm of Deutsche Bank?

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Yes. I recall that the commercial real estate arm, the rates and other terms were less favorable.
Q nd what do you mean by "less favorable?"
I believe the rates were higher and I'm not certain, but I -- the proceeds I believe were lower.
MR. H REN: Let's go to Plaintiff's Exhibit 369.
nd Mr. Orowitz, again, I'm going to show you this document solely for the purposes of determining whether it refreshes your recollection, and I'll direct your attention to you -- you can see beginning on page two there is a title "Doral Golf Resort and Spa Miami."
Yes.
Q nd on page four on the left side of the page there is a series of items proceed by hyphens, one of which states "$130 million term loan priced at L + 800 with a two percent LIBOR floor." Do you see that?
Yes.
Q Does that refresh your recollection that the rate offered by Deutsche Bank's commercial real estate arm is approximately ten percent?
No, it does not.
Q Let's move to Plaintiff's Exhibit 3245.
Mr. Orowitz, do you recognize Plaintiff's Exhibit 3245 as an e-mail from you to Ivanka Trump and llen Weisselberg?
I don't remember it, but it appears to be an e-mail,

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yes.
Q nd do you understand the subject "DB" to refer to Deutsche Bank?
Yes.
Q nd given the timing just five days after the November 18th documents we looked at -- do you understand that this refers to this -- this relates to Doral?
I would assume so.
Q The e-mail states: "I spoke to the DB guys this morning. They are focused on how they are going to present the project to other lenders, which I do not think bodes particularly well."
Do you have an understanding as to what you meant by "I do not think bodes particularly well?"
I'm not certain exactly what I meant at the time, but I could presume what it means.
Q What do you understand it to mean?
I think it means I had concerns that they didn't want to hold the loan on their balance sheet and that they were -- that that might indicate that they were less interested in the loan.
MR. H REN: I move to admit Plaintiff's Exhibit 3245.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. Its 'in evidence.

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Five-minute warning.
MR. H REN: Thank you, Your Honor.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3245 in evidence.)
Q Up on the screen will be Plaintiff's Exhibit 3226.
nd Mr. Orowitz, do you see in this exhibit a series of e-mails involving you Ivanka Trump and llen Weisselberg?
Yes.
Q nd do you understand that this e-mail chain involves the Doral property?
Yes.
Q nd beginning on page two there is an e-mail from Rosemary Vrablic at Deutsche Bank stating:
"Please find attached our summary of terms for the proposed acquisition of the Doral resort."
nd Ms. Trump's response: "It doesn't get any better than this." Do you see that?
THE COURT: There is no "any" in there.
Q "It doesn't get better than this," excuse me.
Yes.
Q nd Ms. Trump continues, "I am tempted not to negotiate this, though?"
Yes.
Q nd there are a series of other e-mails involving

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Ms. Trump and Jason Greenblatt.
Do you have an understanding as to who Jason Greenblatt was at the time of this e-mail?
Yes, he was the general counsel at Trump Organization.
MR. H REN: I move to admit Plaintiff's Exhibit 3226.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3226 in evidence.)
Q Let's move to another document, Plaintiff's Exhibit 3271.
nd Mr. Orowitz, in Plaintiff's Exhibit 3271, there is a response from you to Ms. Trump's e-mail where she stated, "it doesn't get better than this?"
Yes.
Q nd you stated: "Some areas that could be problematic in the covenants" and under there you wrote "during reno and during reno and amo periods-guarantor shall maintain a minimum net worth of 3.0 billion excluding any value related to the guarantor's brand value." What does reno refer to in that line?
I think in the context of this loan there was a bifurcation of two time periods; one was while construction was going on and one was after and so I think renovation is reno and

amo is probably amortization.
MR. H REN: I move to admit Plaintiff's Exhibit 3271.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3271 in evidence.)
Q Moving to another document, Plaintiff's Exhibit 332. Mr. Orowitz, you'll see Plaintiff's Exhibit 332 is an e-mail from Ivanka Trump to Rosemary Vrablic, Dominic Scalzi and copied are you and llen Weisselberg and the subject is "Doral term sheet." Do you see that?
Yes.
Q nd I just want to do a quick look through the document. If you could just flip through it and I'll just ask you one question about it.
So, looking at the e-mail and the attachment does this appear to be -- to be the Trump Organization's response to proposed terms from the private wealth group of Deutsche Bank?
Yes.
Q nd I'll just pull up on the screen an undisputed fact from the summary judgment proceeding number 472 that indicates that it's an admitted fact that Ivanka Trump sent a revised term sheet as indicated in this e-mail.

MR. H REN: nd that would be a perfect time for a break once that's up on the screen. We can do that after the break.
THE COURT: Looks complicated and long.
Okay, 15-minute break. See you all at that time.
(Whereupon, there is a recess in the proceedings.)
Transcript continues on the following page....

THE COURT OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.
Witness entering.
(Witness resumes the stand.)
THE COURT: Let's continue.
Q Welcome back, Mr. Orowitz. I would like to turn your attention to the Chicago property and pull up Plaintiff's Exhibit 3240.
Mr. Orowitz, do you see on the first page of the exhibit an e-mail from you to David Goodman and Jim Griffith at Deutsche Bank?
Yes.
Q nd the attachment -- well, one of the attachments is identified as a financing memo?
Yes.
Q Do you have an understanding of what a financing memo refers to in the context of this e-mail?
Yes, it was a document that was put together with basic information that a lender would need to understand a real estate deal.
Q You said "was put together." Is that something that was put together in the Trump Organization?
Yes, either -- in some cases, we do it or a broker would do it.
Q Broker, did you say?

Sometimes a broker would do it as well.
Q Thank you.
MR. H REN: I move to admit Plaintiff's Exhibit 3240.
MR. ROBERT: Objection. Statute of limitations and so the record is clear, is this one that was prepared by the Trump Organization or by a broker because the witness said sometimes it is one or the other.
Q Mr. Orowitz, can you describe the circumstances under which this financing memo was prepared?
This appears to have been put together by the Trump Organization.
Q Thank you.
THE COURT: So it is in. Objection overruled.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3240.)
Q nd directing your attention to page two -- not the page -- the page two of the exhibit where it says 2 of 22 at the bottom, there is a description in the middle of the page that reads -- excuse -- I'll just -- in the interest of time, we could just move on from the document.
Withdraw the question and move to Plaintiff's Exhibit 3239.
Mr. Orowitz, do you see in the first page of Plaintiff's Exhibit 3239, there is an e-mail from David Goodman

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at Deutsche Bank to you and Ivanka Trump?
Yes.
Q nd just to situate that in the timeline, the prior exhibit when you sent the financing memo was three days before this exhibit or this e-mail, right?
Yes.
Q nd the e-mail from Mr. Goodman states, " ttached, please find term sheets for hotel and condo financings."
Do you have an understanding of what Mr. Goodman was providing in this e-mail?
Yes.
Q Okay.
I believe he was providing two separate financing. One was for the hotel which was an asset that we were going to hold on to and the other was for the residential condominiums which we would sell off over time and paydown the loan.
Q nd could you just describe the nature of the Chicago property and how it relates to those two categories of financing you described?
Yeah. The Chicago tower had retail. It had residential condominium, so individual residences that were sold off to individual buyers and then it had a hotel and that hotel originally was hotel/condominium, so the hotel units would be sold off when we refinanced. t this point, the intention was to hold on to all the remaining hotel/condo units and operate

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them as a sponsor-held hotel along with the hotel/condo units that had been sold off.
Q nd beginning on page two of the exhibit, there's identified as up to 56 million in financing for the commercial condo component.
Yes.
Q nd on page four, there is an indication of the type of recourse provided for in this term sheet. It states, "The loan will be non-recourse to borrower with some exceptions."
Do you see that?
Yes.
Q On page six, there is an indication that the interest rate fees, et cetera, are outlined on Schedule ?
Yes.
Q nd on page ten, there is actually a Schedule that provides for pricing and various other terms?
MR. ROBERT: Objection.
THE COURT: The ground?
MR. ROBERT: He's reading from a document that's not in evidence and it wouldn't be able to come into evidence because it is hearsay.
MR. H REN: This is the same point as we dealt with with the prior term sheet. This is a term sheet received by Mr. Orowitz in the ordinary course of business seeking financing for the Chicago property. We're offering it for

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the same purposes as the earlier exhibits were offered and accepted.
MR. ROBERT: For the purpose that they received something, but all of the contents of it are inadmissible hearsay. Is that what you are saying?
MR. H REN: Could go to state of mind internally, inside the company to choose as a private wealth loan with a guaranty as opposed to a commercial real estate loan that is non-recourse, would tend to go to state of mind.
MR. ROBERT: Notwithstanding the fact that you would have to stay whose state of mind you are trying to attribute this to. It doesn't change the fact that the contents of this attachment from Deutsche Bank is inadmissible hearsay.
MR. H REN: I think we dealt with this in the prior exhibit. It is the same principle.
THE COURT: Same ruling, same principle. Overruled.
MR. ROBERT: I think it was sustained as to what our objection was subject to what Mr. --
THE COURT: Oh, well, let's try to be very precise. It is being introduced for what purpose?
MR. H REN: It is being introduced for two purposes; one to show notice of the terms received by the Trump Organization.

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THE COURT: Well, that alone should do it. Doesn't it?
MR. ROBERT: Notice of purported -- notice of what's contained in the document, but not those were actually the terms offered by the bank.
MR. H REN: It goes to state of mind, as I said.
MR. ROBERT: That part I don't understand because it would be whose state of mind.
THE COURT: Right. Let's go to the second ground. Whose state of mind?
MR. H REN: Sure. Inside a company, companies work through people. There's imputed knowledge of an agent that gets imputed to the principal. If there is one set of terms that involves the submission of Statements of Financial Condition and those terms have a very low interest rate and there is another set of terms that are a much higher interest rate that are not private wealth loans that would tend to show a motive or a -- minimum a motive to use those statements.
THE COURT: In for both purposes or on both grounds.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3239.)
Q Then turning to page 15, there begins a summary of terms for unsold residential condominium units. Do you see

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that?
Yes.
Q On page 18, there is a description of recourse at the very top that says, "The loan will be non-recourse to borrower with certain exceptions"?
Yes.
Q nd on page 18 also -- excuse me. I may have the wrong page. t the very bottom of page 18 that provides loan interest rate fees, et cetera are outlined on schedule . Do you see that?
Yes.
Q nd page 22 is the Schedule that pertains to this particular term sheet and it -- do you see that it provides an interest rate with a spread of 800 basis points?
Yes.
Q You can set that document aside. We will turn to Plaintiff's Exhibit 3242. Now, Mr. Orowitz, in the e-mail on the first page, do you see that there's an e-mail from Jason Greenblatt to David Goodman at Deutsche Bank on which you, Ivanka Trump and llen Weisselberg are copied?
Yes.
Q nd the e-mail from Mr. Greenblatt provides, " ttached, please find a revised draft of the proposed term sheet." Do you see that?
Yes.

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Q nd since the subject of the e-mail refers to Chicago, do you have an understanding that the proposed term sheet relates to Chicago?
Yes.
MR. H REN: nd if we could turn to -- I guess I'll move to admit this document, Plaintiff's Exhibit 3242 as Mr. Greenblatt who was the -- withdrawn. I move to admit Plaintiff's Exhibit 3242 as the Trump Organization's response to a term sheet regarding the Chicago property.
MR. ROBERT: This one is just a statute of limitations defense. This is fine because this is us sending our work product to them, so it is not hearsay.
THE COURT: Okay. Understand. Overruled.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3242.)
Q If you can turn to page 17 of the document, please. Do you see at the very top, there's a reference to "Trump draft 6/19/12"?
Yes.
Q Do you have an understanding as to what that refers to?
Yes, this is -- this is a redline or a markup of a term sheet and that refers to a draft.
Q When it says, "Trump draft," that means it is a Trump Organization response, correct?
Yes.

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Q nd if you could turn to page 29. Do you see that there is a Schedule that provides an interest rate?
Yes.
Q nd it provides, "The interest rate shall be calculated at rate lock (see below) by adding [392] basis points (the spread) to the yield on the ten-year on the run swap rate. However, in no event shall interest rate be less than 5.64 percent with that number in brackets?"
Yes.
MR. H REN: Since that's -- if we can move to the next document. Handing up to the witness Plaintiff's Exhibit 3235.
Q Mr. Orowitz, looking at Plaintiff's Exhibit 3235, you can see an e-mail from Jacob Turner at CSG Investments to Ivanka Trump followed by an e-mail from Ivanka Trump to you and llen Weisselberg on pril 18, 2012. Do you see that?
Yes.
Q nd the subject of the e-mail is "Trump Chicago investment memo"?
Yes.
Q nd could you just take a look at Mr. Turner's e-mail. I am going to ask you some questions about the e-mail that's at the top, but take a look at Mr. Turner's e-mail before I do that.
(Witness reviewing document.)

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Q So I guess I'll walk you through it before I ask you questions about the e-mail that Ms. Trump sent to you.
On page three, there's an e-mail from Ivanka Trump to ndrew Beal. Is that the ndy Beal you referenced earlier?
Yes.
Q nd Ms. Trump writes in that e-mail to Mr. Beal, "My father had asked me to send you the Trump Chicago loan memo per your conversation yesterday. Sometime in the next few weeks, I was planning to go to market for senior financing on our iconic 92-story mixed-use skyscraper in Chicago Trump International Hotel and tower. This loan would be secured by both the unsold inventory of the condominium units and retail component as well as operating cash flow from the hotel commercial and parking facilities."
On page three of the document, Mr. Turner responds, "Ivanka, thanks for the Trump Chicago memorandum. I have reviewed the materials on a truly beautiful first-class property. We are passing on the loan opportunity based predominantly on the interest rates sought."
Yes.
Q It is a little bit difficult to read because of the small print, but on page two at the very bottom, Ms. Trump asked Mr. Turner the following question. "Out of curiosity and so I can better understand how you look," I think it says, "how you took at these type of loans, what type of pricing would you

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attach to the Chicago financing request"?
nd Mr. Turner responds in part on page one, bolded underline text short answer, "Our new loan originations generally start with a baseline of around L plus 500, with a LIBOR floor of two." nd Ms. Trump then forwarded that information to you and Mr. Weisselberg stating "some interesting feedback." Do you see that?
Yes.
Q Do you have an understanding as to why Ms. Trump added llen Weisselberg to this e-mail chain and stated to you "some interesting feedback"?
I would presume she wanted to give him the benefit of understanding how this specific lender was looking at a loan like Trump Chicago.
MR. H REN: I move to admit Plaintiff's Exhibit 3235 into evidence.
MR. ROBERT: Objection; statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3235.)
MR. H REN: Plaintiff's Exhibit 3236 is being handed up to the witness.
Q Mr. Orowitz, looking at Plaintiff's Exhibit 3236, you recognize that it is the same e-mail chain that we just looked at except for a different ending?

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Yes.
Q nd following Mr. Turner's e-mail to Ms. Trump, Ms. Trump then e-mailed you directly and stated, "I think we made a mistake adding rate to our memo...." Do you see that?
Yes.
Q What did that indicate to you?
It indicates to me that she was questioning whether we should have included a rate because it does seem to have made them not dig in on potentially giving a loan.
MR. H REN: Move to admit Plaintiff's Exhibit 3236.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3236.)
Q Now, Mr. Orowitz, let's talk about the Old Post Office project. You have a general recollection of working on that project during your time at the Trump Organization?
Yes.
MR. H REN: Handing up to the witness Plaintiff's Exhibit 3241.
Q Mr. Orowitz, Plaintiff's Exhibit 3241, you see that it is an e-mail from you to llen Weisselberg, Jason Greenblatt, Ivanka Trump and Ray Flores on September 3, 2013?
Yes.
Q The subject is " ll documents for OPO financing."

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What did you understand that to refer to?
It appears to be me sharing two clean versions of the term sheet that we got from Natixis and DB and then a quick markup of like my initial thoughts on them and then a comparison that Ray did, Ray Flores did against some previous loans that the Trump Organization had done.
Q nd for what purpose were you sending this information to the recipients of the e-mail?
I believe it was to get my initial thoughts out to them as quickly as possible and get everyone thinking about how to proceed with a loan.
Q The e-mail states, "We are speaking to Iron Hound about DB and Natixis today at noon." Do you see that?
Yes.
Q Can you explain what Iron Hound is and what its role was in this transaction?
Iron Hound is a broker and consultant that helps real estate owners attain financing.
Q nd what was its role in this transaction?
They were helping us to find potential lenders and negotiate with them.
Q So they were working on behalf of the Trump Organization?
Yes.
Q In item three on your list, you state that "One item

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attached was a comparison that Ray finalized last night of Natixis and DB versus our previous DB, Hypo and Fortress loans. Who is Ray as referred to there?
Raymond Flores.
Q What was Mr. Flores' role at the Trump Organization at the time?
He was a financial analyst and reported to me.
MR. H REN: nd I'm going to move to admit Plaintiff's Exhibit 3241.
MR. ROBERT: s to the cover e-mail, objection, statute of limitations. s to the attachments, there appears that there are more attachments listed on the cover e-mail than are attached to this exhibit. To the extent that they are documents prepared by anyone other than Trump, I object that it is hearsay; but it is not complete because the e-mail talks about a preliminary markup and a comparison and it looks like those are in the attachment, but it is not on what I was just handed.
MR. H REN: So as to any item, one term sheet from Natixis and DB, the Court has already ruled the various purposes for which term sheets could come in. Item two, Mr. Orowitz's preliminary markups, those are his markups. He was an employee of the organization.
MR. ROBERT: I'm not fighting you on two and three. They're not here, so it is not complete. I don't know what

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they are.
MR. H REN: One may be -- well, page seven of the document, there is a document withheld for privilege in the middle of the document. So why don't we do this? We can take a look at the term sheet from Natixis which is in the document, the term sheet from Deutsche Bank which is in the document, and we can take a look at the native Excel file that's the other attachment, and the defendants can advise if they continue to object to Mr. Flores' -- excuse me. Mr. Orowitz's markups of term sheets and we can move past that issue.
MR. ROBERT: I'm sorry. I didn't understand any of that. I'm sorry. Maybe I didn't hear it.
THE COURT: That was tough to follow.
MR. H REN: In the exhibit, there is a term sheet from Natixis. That's the first attachment beginning at page two.
MR. ROBERT: Goes from page two to page five?
MR. H REN: Page two to page five. Page seven, there is document withheld for privilege.
MR. ROBERT: Seven and eight. Got you.
MR. H REN: nd then following that, there is a term sheet from Deutsche Bank.
MR. ROBERT: Okay.
MR. H REN: That concludes on page 21. nd then

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page 22 is a document provided natively which our other discussions is likely an Excel file and you can see that the last attachment listed in the e-mail is an Excel file.
MR. ROBERT: So you're representing to me that item two in the e-mail was withheld for privilege? I can't tell.
MR. H REN: You would know better than I would the documents that are withheld for privilege based on the pages that are attached to the exhibit is my understanding.
MR. ROBERT: You are telling me this is the complete e-mail of attachments that was turned over to you?
MR. H REN: Except for the native file which is Excel.
MR. ROBERT: I keep my standard objection then.
THE COURT: Same ruling. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3641.)
MR. H REN: I'm informed that there may be -- since it says "document withheld for privilege" on page seven and page eight, that may be two different documents that are withheld for privilege.
THE COURT: Defendants, Mr. Robert, do you want to waive the privilege?
MR. ROBERT: I accept his representation and later we can clean it up.
THE COURT: Do you want to waive the privilege?

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MR. ROBERT: bsolutely not.
Q I want to move to page two of the exhibit. Mr. Orowitz, you see there is a label at the top "Natixis" and it appears to be a term sheet from Natixis for a loan related to the Old Post Office?
Yes.
Q nd beginning on page nine, there appears to be a term sheet from Deutsche Bank related to the Old Post Office?
Yes.
MR. H REN: If we could pull up on the screen Plaintiff's Exhibit 3241 native one.
Q Mr. Orowitz, you recall in the e-mail there was a reference to a comparison that Mr. Flores prepared of potential terms for the Old Post Office transaction. You can see -- do you recognize this Excel spreadsheet on the screen to be that document?
Yes.
Q nd you can see in this document there are interest rate terms identified?
Yes.
Q nd so there's a spread from Natixis of 5.25 in the document. Do you see that?
Yes.
Q From Deutsche Bank, this is a spread identified at 4.25 percent?

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Yes.
Q nd there is a comparison to a Fortress loan that had a spread of 11 percent?
Yes.
MR. H REN: I'm going to move to admit Plaintiff's Exhibit 3241 including the native file that Mr. Flores prepared.
MR. ROBERT: Statute of limitations, but I thought it is already in based on the Court's ruling.
THE COURT: It was a different document, right? nyway, it is in either way.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3241.)
Q We are going to move to Plaintiff's Exhibit 513. Mr. Orowitz, Plaintiff's Exhibit 513, you mentioned that Iron Hound was working on the Trump Organization's behalf in connection with seeking financing for the Old Post Office transaction?
Yes.
Q nd you can see that this is an e-mail that is sent to Chris Herron at ironhoundmgt.com?
Yes.
Q Was he working on behalf of the Trump Organization at Iron Hound in connection with the Old Post Office?
Yes.
Q Beginning on page two, there is a document -- does the

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document appear to you to be a term sheet from Deutsche Bank for the Old Post Office project?
Yes.
Q nd just directing your attention to page 15 -- excuse me -- 14, do you see that there's a spread identified of 400 basis points?
Yes.
Q nd just turning your attention back to the e-mail, there are three attachments identified. There's "db_old postofficetermsheet.doc," "termsheet(v7versusborrowercommentstov4).doc" and "termsheet(v7versuslenderpriordraft(v4).doc."
MR. H REN: Just want to move to admit this document and the attachments as notice to Mr. Herron from Iron Hound who was working on the Trump Organization's behalf.
MR. ROBERT: Objection; statute of limitations and hearsay.
THE COURT: Overruled.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 513.)
MR. H REN: Moving to Plaintiff's Exhibit 3303.
Q So Mr. Orowitz, in Plaintiff's Exhibit 3303, you see an e-mail from Chris Herron at Iron Hound to you, Jason Greenblatt and others with the subject "OPO term sheet." Do you see that?

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Yes.
Q nd the e-mail states, "There are certain points in that term sheet that DB specifically pointed out to us that they do not have room to move on (economics as we discussed) and others that were made without a detailed explanation that may require a direct conversation." Do you see that?
Yes.
Q Now, there are three documents attached to this e-mail. "db_oldpostoffice-termsheet.doc" and "term sheet(v7versusborrowercommentstov4).doc" and "termsheet(v7versuslenderpriordraft(v4).doc."
The document is 78 pages long, so I don't want to take you through all of it, but I want to direct your attention to page 14 entitled "Economics" at the top left.
Do you see that this page also contains the same spread 400 basis points?
Yes.
(Continued on the next page.)

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MR. H REN: I'm going to move to admit this document for the same purpose as the last document.
MR. ROBERT: Objection. Statute of limitations and hearsay.
THE COURT: Overruled.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3033 in evidence.)
MR. H REN: Plaintiff's Exhibit 322.
Q nd Mr. Orowitz, just directing you back to Exhibit 3303. I just want to note the date was November 5, 2013 on the prior exhibit.
MR. ROBERT: Can I ask Mr. Haren to speak up a little? I'm having difficulty hearing.
MR. H REN: Sure. Is that better?
THE COURT: Much.
MR. H REN: Sure. I indicated to the witness that the last document was November 5, 2013.
Q Exhibit 322 is an e-mail from you to Tom Sullivan at Deutsche Bank. Do you see that?
Yes.
Q nd you were e-mailing him a document entitled, "Old Post Office Offering Memo ugust 2013?"
Yes.
Q What do you understand that offering memo to be?

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This is a document explaining the general facts that a lender would want to know about a potential real estate investment in their interest in lending against it.
Q nd the attachment is identified as -- on the first page, it's page two of the document, "Trump International Hotel The Old Post Office Building Washington, D.C." and on the bottom left, it says, "Ironhound Management Company LLC?"
Yes.
Q nd so this document, was this the Trump Organization's offering memo in connection with seeking financing for the Old Post Office?
This was a memo that was put together. I'm not sure to what degree Ironhound was involved in that, but we were certainly involved in putting it together.
MR. H REN: I'm going to move to admit Plaintiff's Exhibit 322.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 322 in evidence.)
Q nd did you have an understanding that Mr. Sullivan was with the private wealth group at Deutsche Bank?
Yes.
Q nd so just on or about this time November 22nd, is

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that a -- that was essentially when the Trump Organization began to seek financing for the Old Post Office from the private wealth management group at Deutsche Bank?

It appears to be from the same, yes.

MR. H REN: Just give me one second, Your Honor, to confer with colleagues.

THE COURT: Sure. I confer a lot too, you know.

(Whereupon, there is a pause in the proceedings.)

MR. H REN: So can we pull up Plaintiff's Exhibit 327?

Q So Mr. Orowitz, this is an e-mail from Tom Sullivan to you and Ivanka Trump and others attaching a term sheet in connection with the Old Post Office property. Do you see that?

Yes.

Q nd so is this document and the attached term sheet, do they represent terms from the private wealth management group at Deutsche Bank?

Yes.

MR. H REN: I'll move to admit Plaintiff's Exhibit 327.

MR. ROBERT: Objection. Statute of limitations, hearsay.

THE COURT: Overruled.

Q nd let's pull up Plaintiff's Exhibit 1286. I assure you, Mr. Orowitz, I will not be asking you about this entire

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document, but do you recognize it to be the request for proposals from the General Services dministration in connection with the Old Post Office property?

Yes.

Q nd turning to page five of the document.

MR. H REN: I move to admit Exhibit 1286 as the RFP for the Old Post Office project.

MR. ROBERT: Objection, Your Honor. Statute of limitations, but this is a complete hearsay document. It's prepared by the government, a request for proposal for Old Post Office.

MR. H REN: It's going to be used to show the Trump Organization's responses not for the truth of any items contained.

MR. ROBERT: I still would object that it's impermissible to have it come in through this witness and it that it's hearsay.

THE COURT: I would think that it's -- the overall -- overall it's basically saying -- the government is saying we want to renovate the Old Post Office, here is what we want, send us your proposals. What about that is --

MR. ROBERT: nd they can call a witness from the government to do that. They're using a former employee of the company to admit documents without having to lay the proper foundation through either a representative of bank,

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insurance company or the federal government. There is a manner in which to properly present their case. Respectfully, this is not one of them.

MR. H REN: If a person had a business, receives a request for proposals, takes steps to respond to it, participates in the response to it, the request for proposals itself to come in to show what the witness and the business were responding to.

MR. ROBERT: I disagree with that.

THE COURT: I agree with it. Objection overruled.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1286 in evidence.)

MR. H REN: Plaintiff's Exhibit 1164?

Q Mr. Orowitz, do you recognize Plaintiff's Exhibit 1164 as the response of Trump Old Post Office LLC to the GS 's RFP regarding the Old Post Office property?

Yes.

Q nd I just want to direct your attention to page two of the document. There is a letter on page two, letter signed by Ivanka Trump. Do you see that?

Yes.

Q nd do you see that the letter describes the Trump Organization on the roles of Donald Trump, Jr., Eric Trump and Ivanka Trump within the company?

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Could you direct me to that?

Q Sorry. I withdraw it. I think I may have the wrong page, so I just withdraw that question.

Page 145 of the document refers to the developer's financial capacity and capability. Do you see that?

Yes.

Q nd then page 153 refers to financial statements.

Yes.

Q nd it reads: "Please find Trump's Statement of Financial Condition in an envelope submitted with each copy of this proposal." nd it continues at the next paragraph.

"Please note that Trump affiliates are all private companies. The attached Statement of Financial Condition was compiled under G P, but it should be noted that there are departures from G P that are described in the accountant's compilation report attached to the Statement of Financial Condition. Most personal financial statements contain G P exceptions. WeiserMazars LLP has compiled these financials." Do you see that?

Yes.

Q nd I'm going to note an undisputed fact from defendant's summary judgment papers, paragraph 143 where defendants stated: " s required by the GS , the 2008 to 2010 SOFCs were submitted as part of the bid and the ttorney General's office response was undisputed." That's number 143 of

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the defendant's 202 statement.
MR. H REN: I move to admit Plaintiff's Exhibit 1164.
MR. KISE: So, Your Honor, I don't know whether he did or not --
MR. H REN: I move to admit the Trump Organization's response to the GS RFP Exhibit 1164.
MR. KISE: So hearsay obviously, relevance, statute of limitations, and his reference to the 2008 to 2010 SOFCs, I don't even know those are at issue in the case, so I'm not sure -- there hasn't even been any allegation that there is a problem with the 2008 to 2010. That has never come in before, so I'm not exactly sure what that reference related to -- I'm sure it was undisputed in the summary judgment that they were submitted because yes, but that doesn't make it relevant to this trial proceeding and I don't see what any relevance of these RFPs is. I mean, this is way outside the statute of limitations. There is no claim that is presented with respect to the OPO award process. So is there?
MR. H REN: Couple of responses. It's certainly not hearsay. It's entitled "Proposal of Trump Old Post Office LLC."
THE COURT: Statement of a party.
MR. H REN: s to the other matters it relates to a

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course of conduct, use of the statements of financial condition and business agreed that the date of the RFP is outside the statute of limitations, but that doesn't mean it's not relevant for the Court to determine what, if any, equitable relief to award.
MR. KISE: But which statements of financial condition? This is the 2008 -- by his own statement, this is the 2008 to 2010 statements of financial condition which heretofore have never been mentioned in the course of this proceeding, so I'm not sure are we going to go back there? I know that we're -- there is no calendar or clock associated with any of this, so -- but that's a new -- 2008 to 2010 is certainly a new allegation.
MR. H REN: I would add there is an allegation in the complaint that refers generally to the Old Post Office, but the statement in the 202 statement is not our statement. It was a statement from the defendants describing the submission of these statements to the GS and that is what we did not dispute, so you put it in your 202 statement.
MR. KISE: gain , there is a big difference.
THE COURT: That's the banned word, but you can say it again.
MR. KISE: s I stated before, but just because we said that the 2008 to 2010 statements were submitted to the GS , okay, they were, but it has no relevance to these

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proceedings. That may be undisputed that they were in fact submitted, but there is no relevance to these proceedings because these statements have never been challenged. There is not a shred of evidence that has been introduced at trial or before about the 2008 to 2010 statements.
MR. H REN: I don't want to say this necessarily in front of the witness, but there will be other documents that come in in the next few minutes or very early tomorrow morning that describe the actions and responses of certain people in connection with this RFP and they will be relevant at a minimum for that purpose.
MR. KISE: But again, actions by others -- well, I'm saying again to Counsel not to you, Your Honor, actions by other people -- let me just see if I get this right.
In responses in connection with this RFP, but those would be actions based on 2008 to 2010 financial statements, not 2011 to 2021, which is what the case has always been about, at least I thought so.
MR. W LL CE: I'll just interject, and I apologize to Mr. Haren, but the thread here is there is a discussion of some of the G P exceptions in the statements of financial condition as part of the GS process that shows the knowledge of the company and its officers about -- around the G P exceptions that people are now claiming they are not familiar with. So that is the thread that pulls us

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through and that this is the process that eventually leads to the loan that is in very much indeed apart of this case.
THE COURT: Objection overruled. Pattern and practice to repeat myself or again bars claims not in evidence.
nd five-minute warning.
Overruled.
MR. H REN: Plaintiff's Exhibit 1288.
THE COURT: nd notice which is part of pattern and practice.
MR. KISE: Your Honor, just so I'm clear on the ruling.
THE COURT: Yes.
MR. KISE: Part pattern of practice of what, 2008 to 2010?
THE COURT: Of the Trump Organization.
MR. KISE: But there's not been any allegation that the 2008 to 2010 statements of financial condition have any issues associated with them.
THE COURT: Well, would there be?
MR. W LL CE: But there is and there is a discussion of the G P exceptions that carries through this entire period, including 2008, 2010, 2011, 2012, all the way into the future and the G P exceptions that are contained within the Statement of Financial Condition are very much a

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question that is open to debate at this point and goes to the knowledge and intent of the individuals that were executives of the Trump Organization and the fact that we can establish before the statute of limitations period knowledge of certain individuals is certainly relevant evidence.

THE COURT: That you can certainly do.

MR. KISE: But, again, as to the 2008 to 2010 financial statement -- statements of financial condition that's the key distinction here. Whatever took place before 2011 wasn't ever part of the case. I mean, are we going -- I'm just -- I don't see the thread that Mr. Wallace -- with all due respect, I'm not exactly sure what he's talking about because those had never been challenged as having any issues. There was no testimony from Mr. Bender, there was no testimony from any witness about those.

Does the case now involve the defense of the 2008 to 2010 statements of financial condition?

THE COURT: Mr. Wallace, last word.

MR. W LL CE: I will just say that the complaints or summary judgment papers there has been a through line that there has been a discussion amongst the members of the Trump Organization about the G P exceptions in the statements of financial condition. The defendants have claimed very few people were even aware of these statements

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within the company. They don't know about the G P exceptions, so it's relevant to that.

I would also note from a timing perspective, this colloquy that we're having here is exactly what we're worried about when it's objection overruled. Let's talk about it for another ten minutes.

I think we've made our case as to why this will connect and we're entitled to put the evidence in and show that connection.

THE COURT: I try to strike a balance between not wasting time when I've made a ruling and explaining the ruling and allowing a record to be made and Counsel to say what he has to say. But we're basically done for today, anyway, so what time are we resuming tomorrow? Let me guess, 10 o'clock with this witness?

Objection overruled, by the way.

MR. ROBERT: Your Honor, can we have a sidebar?

THE COURT: Sure. We'll have a front bar.

nd I'll order the witness not to discuss this case or his testimony or anything related to that with anybody until you're finished testifying team.

THE WITNESS: Okay, Your Honor.

THE COURT: Thank you.

(Whereupon, the witness is excused from the witness stand.)

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(Whereupon, the trial proceedings are adjourned to November 1, 2023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al.

M. MCC RTY, DON LD TRUMP, JR.
November 1, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12 LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X
60 Centre Street
New York, New York 10013
November 1, 2023

B E F O R E:

HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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(ppearances continued on the next page.)

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Proceedings Page 3018

THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Would you like to continue with your witness?

MR. H REN: I would. We recall David Orowitz.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness enters the courtroom and approaches the witness stand.)

THE COURT: I'll ask Counsel to keep in mind we have a busy day and a busy week, so let's try to move things along as quickly as we can, and please proceed.

MR. H REN: Thank you, Your Honor.

CONTINUED DIRECT EX MIN TION

BY MR. H REN:

Q Good morning, Mr. Orowitz. Welcome back. Sorry you're here for a second day.

THE COURT: nd I'll remind him, as I always do, the witness is under oath.

Q I'd like to go back to Plaintiff's Exhibit 1288, which we almost began to discuss yesterday.

Do you recognize this to be an e-mail from you to

D. Orowitz - Plaintiff - direct (Haren) Page 3019

Patricia Moore copying Ivanka Trump and others on December 14, 2011?

Yes.

Q Do you see that the subject says "meeting to discuss OPO presentation?"

Yes.

Q Do you have an understanding of the circumstances surrounding this e-mail?

My recollection is that we got I believe two rounds of questions from the GS based on our proposal and this was one of them and I was attempting to kind of organize people around our response.

Q nd you see that the e-mail that you sent contains three attachments?

Yes.

Q nd one is GS letter to Trump Organization 12132011.PDF?

Yes.

Q Do you understand what that refers to?

I believe it refers to one of those letters with some of their questions or requests for clarification.

Q nd the third attachment is entitled, "Outline for 12-19-1" -- excuse me -- "12-19-11 Presentation docx."

Do you have an understanding of what that refers to?

I'm not certain, but I think that that probably refers

D. Orowitz - Plaintiff - direct (Haren) Page 3020

to a presentation that we did in person where we were presenting our proposal to constituents in the GS .
Q nd there is a notation in the e-mail that identifies it as one of high importance. Do you have a recollection as to why that designation is there?
We want -- we would have wanted -- this was important and we would have wanted to get organized quickly and make sure we had as thoughtful a response as we could.
MR. H REN: I move to admit Plaintiff's Exhibit 1288 into evidence.
MR. KISE: Objection. Statute of limitations and relevance.
THE COURT: Where is Mr. Robert? He usually does that.
MR. KISE: I know. I've got to take over this morning.
THE COURT: Overruled. It's in evidence.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1288 in evidence.)
Q nd directing your attention to page three of the exhibit. Do you recognize this as a letter from the General Services dministration to Ivanka Trump as executive vice president of acquisitions and development at the Trump Organization?

D. Orowitz - Plaintiff - direct (Haren) Page 3021

Yes.
Q nd the letter states: "This is to confirm that your team is scheduled to make a presentation regarding the above-referenced solicitation on December 19, 2011 at 2:00 p.m.." Is that a reference to the in-person presentation that you mentioned earlier?
I believe it is.
Q nd then on page four this is the second page of the letter under "Factor 3." It states under the second bullet, "financial statements appear to have multiple G P departures, including but not limited to, not including separately held financials, no provision for income tax and the PV of the deposits not reflected." Do you see that?
Yes.
Q Was that an issue identified by the GS during the process?
It appears to be from this letter, yes.
Q nd then on page four, same page, there is a bullet that reads -- it's the third bullet, "please provide a statement regarding any bankruptcy or loan defaults on real estate development projects as specified under Factor 3."
Was that also an issue identified by the GS during the bidding process?
Yes.
Q I want to direct your attention to page 15 of the

D. Orowitz - Plaintiff - direct (Haren) Page 3022

document. Is the information on page 15 and what follows in a table format, is that the outline for presentation that you attached to your e-mail?
Yes.
Q nd the outline identifies under the heading "Oral Presentation" on page 15 that there would be an intro from Ivanka Trump?
Yes.
Q nd the third bullet reads "DJT speaks." What is that a reference to?
That refers to the portion of the presentation when President Trump was presenting.
Q nd on page 18 of the document next to factor 3B regarding financial statements it reads in part, "Dave to discuss with llen how we might address." Do you see that?
Yes.
Q Was it your understanding that you will discuss the financial statement item under factor 3B with llen Weisselberg?
Yes.
Q How did you come to that understanding?
I have a slight recollection that this was generally an issue that we had to address in our response, so in reviewing this it sort of reminded me of that.
Q But how did you come to the understanding at the time that llen Weisselberg was the person you should speak to?

D. Orowitz - Plaintiff - direct (Haren) Page 3023

Oh, llen is the CFO and was responsible for that side of the business.
MR. H REN: Let's pull up Plaintiff's Exhibit 1429.
Q Mr. Orowitz, the Plaintiff's Exhibit 1429, do you see that it's an e-mail from you to llen Weisselberg on December 16, 2011 pertaining to language in the G P section?
Yes.
Q Does the information in this e-mail pertain to the GS bidding process?
Yes.
MR. H REN: I move to admit Plaintiff's Exhibit 1429 into evidence.
MR. KISE: Objection. Statute of limitations and relevance.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1429 in evidence.)
Q nd in the subject line you wrote in all caps, "Important," and then you added "need to discuss now." Why would you write that?
I think we were on a deadline to get the response put together and I needed people to focus on their portions of that response.
Q nd in the first line of your e-mail reads: " llen,

D. Orowitz - Plaintiff - direct (Haren) Page 3024

Ivanka wanted me to change the language in the G P section. She asked that I review with you."

Do you have a recollection apart from what's in this e-mail of being asked by Ivanka Trump to review language pertaining to G P with llen Weisselberg?

I don't remember that specifically.

Q nd, again, what is your understanding as to why llen Weisselberg was the person you were directed to consult with about the item referenced in this e-mail?

He was the CFO of the company and was familiar with how the accounting worked and how the net worth statement was put together, so he would be the best person to comment on our response.

Q So far as you understand would any G P-related change require llen Weisselberg's approval as it related to the responses of the GS ?

Yes.

MR. H REN: Let's move to Plaintiff's Exhibit 3273.

Q Mr. Orowitz, do you see Plaintiff's 3273 in the middle of the page includes an e-mail from Jeff McConney to Morgan Miles copying you with the subject "SOFC?"

Yes.

Q Who was Morgan Miles?

Morgan Miles was summer intern at the Trump Organization.

D. Orowitz - Plaintiff - direct (Haren) Page 3025

Q nd do you see at the bottom e-mail is from or includes, it says, "message from RNPFC 77-CE" and it states "queries to scanner@Trumporg.com?"

Yes.

Q Do you have an understanding as to whether this document was scanned or e-mailed?

I would assume that.

Q nd looking at the attachment beginning on page two do you see that it says at the top "Redevelopment of Old Post Office, Request For Proposals?"

Yes.

Q nd do you understand that the attachment reflects under the heading "Financial Statements" Mr. McConney's handwritten input into language describing Mr. Trump's Statement of Financial Condition and G P departures?

I don't know whose handwriting this is.

Q But does the e-mail itself indicate that it came to you from Jeff McConney?

It indicates that it came from Jeff McConney, yes.

Q nd back to the e-mail at the very top, you wrote "please incorporate."

Yes.

Q What did you intend that to mean?

We had a larger presentation that this was apart of and my recollection is Morgan was putting that together or helping

D. Orowitz - Plaintiff - direct (Haren) Page 3026

put that together and we needed to incorporate it into a larger presentation.

Q nd so you received handwritten comments pertaining to Mr. Trump's Statement of Financial Condition from Jeff McConney and then directed that they be incorporated?

Yes.

THE COURT: Wait. These are two different things obviously. re you saying yes to both? Incorporate the handwritten notes and incorporate the document into the presentation?

THE WITNESS: I was suggesting that with these changes in the handwritten notes, Your Honor, that that should be incorporated into the presentation.

Q nd the handwritten notes came to you from Jeff McConney?

I received them from Jeff McConney based on this e-mail, yes.

THE COURT: So there are two different incorporations. I just want to make that clear. Okay, I'll assume they agree.

MR. H REN: I move to admit Plaintiff's Exhibit 3273.

MR. KISE: Objection. Statute of limitations and relevance.

THE COURT: Don't you wish your buddy was here?

D. Orowitz - Plaintiff - direct (Haren) Page 3027

MR. KISE: I do. He's making me work today.

THE COURT: Overruled. Granted.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3273 in evidence.)

MR. H REN: Plaintiff's Exhibit 1431 has been handed to the witness.

Q Mr. Orowitz, you'll see on the first page an e-mail from you to Ivanka Trump and others on December 17, 2011. I'll jut advise you that's a Saturday.

nd the subject of the e-mail is "handout for Monday." Do you have an understanding as to what that refers to?

I believe that this refers to a document that we were providing to the GS in tandem with our presentation.

Q nd do you have an understanding that the attachment is a copy of the document that was provided to the GS during the presentation?

Yes. This appears to be a version of it, if not the final version.

Q Let's take a look at page ten of the exhibit. You see at the top at the left it reads "Factor 3:" nd then "3B) financial statements appear to have multiple G P departures" and it goes on?

Yes.

Q nd it provides a response about three separate items

D. Orowitz - Plaintiff - direct (Haren) Page 3028

in bold, "separately held entities provisions for income tax and PV of the deposits?"
Yes.
Q nd those were the same G P departures that were highlighted in the letter from GS we looked at a few moments ago?
Yes, correct.
MR. H REN: I move to admit Plaintiff's Exhibit 1431 into evidence.
MR. KISE: Objection. Statute of limitations and relevance.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1431 in evidence.)
Q nd Mr. Orowitz, I'm going to switch to a different topic and hopefully have you out of here, depending on the defendants. This relates to the Doral property.
MR. H REN: Plaintiff's Exhibit 347 has been handed to the witness.
Q Mr. Orowitz, do you recognize this document as a series of e-mails between you and Dave Williams and Josh Frank from Deutsche Bank on or about March 18, 2016?
Yes.
Q The subject of these e-mails is "Doral/Turnberry."

D. Orowitz - Plaintiff - direct (Haren) Page 3029

Do you see that?
Yes.
Q Do you have an understanding of what that refers to in this time frame?
t that time we were in conversations with Deutsche Bank about upsizing our loan, so getting additional loan proceeds and I believe that's what this e-mail refers to.
MR. H REN: nd I move to admit Plaintiff's Exhibit 347 into evidence.
MR. KISE: Objection. Relevance.
THE COURT: Overruled.
Q Do you have an understanding as to how much in additional financing was being sought by the Trump Organization from Deutsche Bank in or about February or March of 2016?
I don't recall specifically.
Q Let's see if a document refreshes your recollection.
MR. H REN: This is Plaintiff's Exhibit 342 -- 352.
Q Mr. Orowitz, do you see at the top of the document there is an e-mail from Rosemary Vrablic to Ivanka Trump on February 11, 2016?
Yes.
Q nd do you see that in the e-mail Ms. Vrablic wrote to Ms. Trump, quote, "I spoke to the credit team on the" -- excuse me -- "$50 MM request and we are thrilled to consider it for you." Does that refresh your recollection that the Trump

D. Orowitz - Plaintiff - direct (Haren) Page 3030

Organization requested $50 million in financing from Deutsche Bank to upsize the Doral loan in or about February of 2016?
It refreshes my memory that it was around that number, but I don't remember specifically.
Q Thank you.
MR. H REN: I have no further questions for this witness.
THE COURT: Will there be any cross examination at this time?
MR. KISE: Not at this time, Your Honor, no.
THE COURT: Okay. Witness excused.
THE COURT OFFICER: Members of the audience, please remain seated.
(Whereupon, the witness is excused from the witness stand.)
THE COURT: nd Plaintiff, would you like to call your next witness?
MR. W LL CE: Yes. Thank you, Your Honor. The People call Michiel McCarty.
MR. KISE: For the record, Your Honor, we renew our objection as stated on the record yesterday.
THE COURT: I understand that, and I overruled it.
THE COURT OFFICER: Court ready for the witness?
THE COURT: Yes.
THE COURT OFFICER: Witness entering.

M. McCarty - Plaintiff - direct (Wallace) Page 3031

(Whereupon, the witness enters the courtroom and approaches the witness stand.)
THE COURT OFFICER: Raise your right hand.
Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?
THE WITNESS: I do.
THE COURT OFFICER: Please have a seat.
Please state your name and either home or business address for the record.
THE WITNESS: Michiel McCarty spelled M-i-c-h-i-e-l M-c-C-a-r-t-y. ddress is 44 N. Porchuck Road, Greenwich, Connecticut 06831.
THE COURT: Okay. Please proceed, Counselor.
MR. W LL CE: Thank you, Your Honor.
DIRECT EX MIN TION
BY MR. W LL CE:
Q Good morning, Mr. McCarty.
Good morning, Mr. Wallace.
Q So just so that all of us are reminded, I will ask you to speak closely into the microphone so that people can hear you and also remind you to speak slowly so that the court reporter can take down everything we are saying.
Mr. McCarty, where are you currently employed?
I am a chairman and CEO of an investment bank by the

name of MM Dillon & Company.
Q nd what do you do in your role as CEO and chairman of MM Dillon?
I spend the majority of my time doing transactions for clients, corporate clients, mergers and acquisitions, financings, joint venture related.
Q nd what kind of transactions are you involved in?
I do debt transactions, convertible transactions, equity transactions, and assorted various mergers and acquisitions.
Q nd how long have you been working in the banking industry?
For a very long time, since 1975.
Q Could you describe for us your educational background prior to becoming a banker?
I have an undergraduate degree from Vanderbilt University in physics and honors and I have an MB in finance with a concentration in capital markets from the Wharton School.
Q So if we could just go through your employment experience after you obtained your MB .
What was the first position you took after you completed your education?
My first job out of Wharton was for Citibank here in New York working in their merchant banking group.
Q nd could you describe for us what kinds of

transactions you worked on while you were at Citi?
The first one I worked on just showed up was the Penn Central bankruptcy which was the largest bankruptcy in the history of the country at that time and I was assigned to that group for the first nine months I was there. Penn Central was at that time the largest real estate owner in New York owning 24 trophy properties.
Q nd what were your responsibilities in that engagement?
I was put on the team because of my science in analytical background, so I was the valuation expert on the properties which the bank was trying to originate the sale of to recover their losses on Penn Central.
Q nd what were those properties?
Large number Pan m building, the New York Central building, the Commodore Hotel, the Barclay Hotel, the Waldorf storia and about eight office buildings along Park venue and Lexington venue, Madison venue.
Q nd after your time in Citi what was your next position?
I was recruited to join Dillon Read & Company, another investment bank.
Q nd what was your position at Dillon Read?
I had various jobs. I ultimately took control and responsibility for the financing of corporate clients, both equity and debt.

Q nd can you describe for us some of your experiences when you were at Dillon Read?
One of the most notable was I was the lead banker and Dillon Read was the lead manager underwriter of the privatization of Fannie Mae. Fannie Mae was the largest issuer of debt in the United States and the largest provider of mortgages. I believe it still is. I worked for about a year privatizing, setting it up and taking it public in the market.
Q nd after your time at Dillon Read what was your next position?
I was recruited to join SG Warburg, which is a London-based bank. I believe it's the largest bank outside the United States in a role running North and South merica for the SG Warburg operation.
Q nd what were some representative transactions from your time at SG Warburg?
One of the most interesting was the de-merger of Marriott Corporation. Marriott at the time I think was the third largest hotel operation in the United States.
We designed a system to divide Marriott into the hotel management company, Marriott and the real estate owning company post Marriott.
Q nd what was your role on that transactions?
I was the lead banker on that transaction.
Q Were there any changes in your employment during the

course of your time at SG Warburg?
Moore I remember when she was appointed to the Management Committee and Commitment Committee overseeing all the assets in North and South merica.
Q nd what were your -- where were you employed after your time at SG Warburg?
I was involved in selling the SG Warburg to UBS. I stayed on the combined UBS Warburg for my contract period which is nine months and then left to go to a firm here in New York, Gleacher & Co.
Q nd what is Gleacher & Co?
It was an independent investment bank owned by the partners. We sold it to NatWest, a UK institutional bank and we ran it as Gleacher NatWest in North merica. We took over the NatWest operations here in North merica.
Q nd what were your responsibilities at Gleacher and NatWest?
I was running the financing side of the business. Eric Gleacher, who was the founder was running the MN side of the business.
Q When you say "financing side of the business," what does that entail?
The whole spectrum of financing going from bank debt to private placements to public debt and then all the spectrum of equity convertibles and straight equity.

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Q nd can you give us examples of any relevant transactions that you worked on during your time at Gleacher and NatWest?

Probably the most prominent client I had was T&T. I'd done a series of senior debt deals for them. I had actually opposed them in the takeover of NCR and they eventually hired me to take them and sell them to one of the other large telcos, ultimately SBC, Southwestern Bell Corp to form the new T&T.

Q nd where did you go after your time at Gleacher and NatWest?

I started up an investment banking group inside a trading firm in Connecticut called CRT Capital. The investment banking group ultimately became MM Dillon. We spun it off after the 2008 crash from CRT, which it had trading problems in the crash.

Q nd what was your position at that entity?

I was one of the managing partners of CRT Capital and we were part of them and ran investment banking and after the spin I became the chairman of the independent company MM Dillon.

Q nd can you describe for us some representative transactions you worked on during your time at CRT?

Maybe one of the more relevant ones is I began having occasional expert witness testimony cases and two of them that are relevant here. I took on for Credit Suisse, an expert witness testimony in the Lake Las Vegas case, a development

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outside Las Vegas involved about 2,800 homes and golf courses and hotels.

THE COURT: Let me just ask this and/or direct the witness please speak up. You're borderline difficult to hear I think out there.

THE WITNESS: I apologize. I have some seasonal allergies that are clogging me up. I'll try to speak up, though.

THE COURT: Okay, great.

Q Was there any other experts experiences that you mentioned? There were some others, I believe?

I've taken about one a year. I got into the expert witness business very accidentally. I was asked to do for a client in Delaware, a takeover discussion dispute and so I take one or two major a year.

nother one that's relevant maybe is Duke Energy was a past client of mine, had its real estate subsidiary called Crescent Realty and they done it -- a sponsored spin off of Crescent Realty with Morgan Stanley asset management and put on about two and a half billion dollars of debt and ultimately went brought bankrupt. I was put in to testify about the asset of the loans and public debt.

Q So do you have a sense of what's the subtotal number of times you've appeared as an expert witness?

I've probably been hired as an expert witness a couple

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dozen times and I probably testified at trial maybe 14 or 15 times.

Q cross those engagements was there a general subject matter of the issues you testified on?

Really a hundred percent of it was related to capital markets issues.

Transcript continues on the following page....

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Q What kinds of capital market issues?

dequacy of equity and terms and condition of debt, structure of the debt, the knowledge of the participants who bought the debt, all related to things that people trade and issue in capital markets.

Q Did any of those cases involve credit decisions made by lenders?

lmost all of them.

Q Did any of those cases involve the pricing of debt?

lmost all of them.

Q Each of the cases where you appeared, were you always qualified to be an expert?

Yes, I was.

Q In any of the cases in which you testified, were you ever disqualified as an expert?

No, I wasn't.

Q I'd like to go back to some of the work you described apart from your expert experience.

Generally speaking, do you have experience with the underwriting of commercial real estate loans?

I have, yes.

Q What kind of experience do you have underwriting real estate commercial loans?

I sat in as a senior officer and approval of loans at NatWest and for my time at UBS as the approval of real

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estate-related loans.
Q nd what was your role in approving those loans?
I was the senior officer signing off.
Q nd how many other real estate transactions have you worked on since then?
It's not a specialty, but it is probably four or five.
Q Did any of the transactions, any of the commercial real estate transactions you worked on involve high net worth individuals as guarantors?
Yes, so I had a couple.
Q Can you give us those examples?
Yeah. The NatWest had a subsidiary called Coutts that handled the high net worth including the Queen and kind of transaction involving the Coutts client base which one of their high net worth individuals wanted to buy the Cunard Shipping Lines and related real estate assets.
Q ny other experience?
nother client of Coutts wanted to take and split up a public U.S. company that had a real estate subsidiary. Both of these were two and-a-half to three-billion-dollar transactions involving bank financing and equity from the high net worth individuals.
Q nd so who did you represent in those transactions that you just described?
Curiously enough, both parties because the subsidiary

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Coutts was a reporting agent to me and the clients were investment banking clients, so I was the mediator between both parties.
Q Over the course of your career, was review of financial statements to make credit decisions something you did on a regular basis?
Pretty much everything I've done involves review of financial statements and analysis, be it mergers or equity financing, or debt financing. I might have completed, I don't know, 350, 400 transactions and I probably looked at twice as many. So pretty much every day I go to work, I analyze financial statements.
Q What kinds of financial statements, corporate, personal?
Corporate in the majority and the high-net worth individuals, it is individual statements.
Q nd is there a significant difference between corporate financial statements and individual financial statements?
Not really. I mean, it's still the same accounting principles. It is G P. So I don't really view them as highly different. Many of the family offices that we deal with are multi-billion-dollar enterprises.
Q nd are you familiar with the banking transactions at issue in this case?
I am.

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Q nd is the analysis conducted by the lenders in this case similar to analysis that you had performed?
Yes.
Q re there any differences?
One difference I notice is I don't know that I've ever dealt with compilation statements, so many of the transactions are done without audited statements, but compilation was a new thing to me.
MR. W LL CE: Your Honor, I move to qualify Mr. McCarty as an expert in banking and capital markets.
THE COURT: Would that include expertise about compilations?
MR. W LL CE: Not in the preparation of compilations, Your Honor.
THE COURT: Let's hear from the other side.
MR. KISE: Well, it also appears that it is not a valuation of compilation statements either, so that's yet an additional reason that we would object to this witness in addition to the reasons we put on the record yesterday. He has now just testified that he's never dealt with compilation. "I don't know that I've ever dealt with compilation statements."
The entire case centers around the valuation by the banks of compilation statements. So while this witness merely has experience in the banking and financing sector

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and specifically with underwriting loan transactions, it appears that he does not have the specific experience relevant for purposes -- for the purposes that we're here.
Q Mr. McCarty are you capable of reading and understanding and analyzing a compilation statement?
I am. They're not really significant differences to me. The private financial statements of high-net worth individuals many times are unaudited and the difference between the statements, I believe, is not material to my analysis.
THE COURT: I hereby grant the request to deem him as an expert, but, of course, I'll keep in mind his statement that he doesn't or hasn't dealt with compilation statements, but balance that against his statement that he thinks they're somewhat similar or very similar to what he does have great experience with.
MR. KISE: nd just briefly for the record, Your Honor, I think the answer to the question that Mr. Wallace posed still doesn't resolve the issue because he's basically saying in his own opinion there aren't significant differences, but if he hasn't dealt with them before, it is not possible for him to really know that. So he's just qualifying himself in that regard, but I understand the Court's ruling and our objection is noted.
THE COURT: Okay.
MR. W LL CE: s I understand, the issue is the

Court will afford whatever weight based on Mr. McCarty's description of his experience and that will be included in your final analysis as to what weight to afford his testimony.

THE COURT: nd then the next time that you testify in a case like this, you can say you've dealt with compilation statements.

THE WITNESS: That's correct. I now have.

MR. W LL CE: Thank you, Your Honor.

Q Mr. McCarty, I'm going to hand you a document that's been marked as Plaintiff's Exhibit 1780.

Mr. McCarty, do you recognize this document?

I do. It's my expert report.

Q nd when did you prepare this report?

I submitted it on May 26th. I worked on it for a couple of months before then.

Q Did you update any opinions contained in this report at some point?

I did two additional -- I did a rebuttal report and then a supplemental submission just recently.

Q I'm going to -- Mr. McCarty, I'm going to hand you a document that has been marked Plaintiff's Exhibit 1786.

Mr. McCarty, do you recognize this document?

I do. That's my rebuttal report.

Q nd what are the subject matters that you cover in

these two reports?

The matters are the same as I was retained to look at the economic impact of the false and misleading financial statements, if any.

Q nd how did you go about conducting that analysis?

I worked through the documents that were provided in production and I approached it the same way that I would in my transaction analysis. I broke down the business into analytical sections and did market research.

Q Mr. McCarty, I'm going to hand you a document that has been marked as Plaintiff's Exhibit 3302.

Do you recognize this document?

I do. This is the supplemental disclosure document I filed recently.

Q If we turn to the last page of this document, can you tell me what is reflected on this page?

This is the updated lost interest calculation that I did in my original report modified in two manners.

Q Mr. McCarty, this is the subject matter I'd like to discuss with you today, this calculation that you prepared.

Could you tell us what was the assignment that led you to prepare this lost interest analysis?

MR. KISE: Your Honor, is this document in evidence?

MR. W LL CE: No.

THE COURT: No.

MR. KISE: Okay. So is this a demonstrative?

MR. W LL CE: I'm happy to mark it as Plaintiff's 4.

MR. KISE: If it is demonstrative, that's fine. If it is demonstrative, that's okay.

THE COURT: re you so moving?

MR. W LL CE: Sorry?

THE COURT: re you so moving?

MR. W LL CE: I am requesting to have this marked as Plaintiff's Exhibit Demonstrative 4.

MR. KISE: Just this page?

MR. W LL CE: Just this page.

THE COURT: nd just marked as an exhibit?

MR. W LL CE: Demonstrative exhibit, yes.

MR. KISE: Well, just this page again. Not the first one, two, three, pages.

MR. W LL CE: That's fine.

MR. KISE: Yes.

THE COURT: I hereby mark it as a demonstrative exhibit. What number are we going to give it?

MR. W LL CE: It's Plaintiff's Demonstrative 4 because I believe our numbering sequence so far.

THE COURT: Okay. It is now demonstrative Exhibit No. 4.

MR. W LL CE: Thank you, your Honor.

(Whereupon, the Document was marked in evidence as Plaintiff's Demonstrative Exhibit 4.)

Q Mr. McCarty, going back to the question I asked, what was the assignment that led you to prepare this lost interest analysis?

The same as my retention, to try to get a handle on the economic impact of the financial statements that were, I guess, judged as mistaken or fraudulent.

Q t a high level, can you explain to us how you went about that assignment?

Yeah, I can. I might just say this is a modified version. The first version was in my last page of my report, expert report. This one has been modified to take into account the -- Your Honor's ruling on the statute of limitations and updated from the time from May to October. So it is the same analysis, same calculation. It is just modified for those two parts.

Q Okay. I'm going to hand you another document. This is not going into evidence. It is a copy of the summary judgment decision. It is NYSCEF Document No. 1531.

Mr. McCarty, if I could direct your attention to page 25 of this document, we'll pull it up on the screen. Footnote 21, this footnote states, "The subject loans made the banks lots of money; but the fraudulent SOFC's cost the banks lots of

money. The less collateral for a loan, the riskier it is and a first principle of loan accounting is that as risk rises, so do interest rates. Thus, accurate SOFC's would have allowed the lenders to make even more money than they did."

Mr. McCarty, is the statement in this footnote consistent with your experience as a banker?

With a few word changes, it could have been said by me as the way I look at risk and interest rates.

Q nd so just so I understand at this point, your basis for saying that the Statements of Financial Condition that were used in the loans was misstated is coming from the judge's decision on summary judgment?

That's correct.

Q Prior to the judge's decision on summary judgment, what was your basis for reaching that conclusion?

nalysis of the financial statements myself on an independent basis.

Q nd any other sources that you relied upon in reaching that conclusion?

The credit reports of the Trump Organization.

Q Did you also rely on any other experts?

I did for the valuation side. I didn't have an assignment to do the valuation of the assets, so I took as assumed the two valuation experts and the accounting experts' input.

Q t this point, the summary judgment decision is the basis for finding the statements from this --

That's correct.

MR. KISE: That question got cut off. It just said, " t this point, the summary judgment decision is the basis for finding the statements from this" and then it went blank.

Q So at this point, the summary judgment decision is the basis for your conclusion that the financial statements were misstated?

That's correct.

MR. KISE: Just this portion?

MR. W LL CE: The entire decision.

MR. KISE: The entire decision, not this footnote?

MR. W LL CE: I'm going to ask him about this footnote, but he is saying -- the Court decided the statements were false, so that's the basis upon which he is going to discuss the opinions we're going to go through now. I don't know if I need to --

MR. KISE: I reassert my objection to foundation.

THE COURT: He can. Overruled.

Q So going back to this footnote, Mr. McCarty, why is it as risk rises, interest rates go up?

The risk and sometimes it is included credit risk is a representation of --

MR. KISE: Objection. Going back to the footnote, are you asking him in his experience why this happens or are you asking him to comment --

MR. W LL CE: Can I conduct my exam? He has already stated -- I'm sorry. ctually, I assume the objection was to the judge. I withdraw it.

MR. KISE: footnote in an opinion even by our learned judge is not a foundation for an expert to formulate an opinion as to the capital markets. If he's testifying -- if your question is is this his understanding of how it works based on his experience, that's one thing, but your question, I believe, was based on this footnote.

So if it is based on this footnote, I would say that's not a proper foundation because our judge may be an expert in many things, but I would respectfully suggest that he is not an expert in the capital markets. So if his experience bears this out, that's fine; but that wasn't your question.

MR. W LL CE: I'll go back to the prior question.

"Mr. McCarty, is the statement in the footnote consistent with your experience as a banker?"

" NSWER: With a few word changes, it could have been said by me as the way I look at risk and interest rates".

I believe that's a sufficient foundation to show

that this is consistent.

MR. KISE: But then your subsequent question was not based on his experience. It was based on the footnote. So we just need to be clear here because as you know, we have a considerable disagreement as to the foundational and appropriate aspects of this witness testifying at all. So I just want to make sure the record is very, very clear here as to what he's testifying about.

THE COURT: I think the simplest way is just to ask the question again.

But I just want to ask the witness some day, will you tell me those few different word changes, so when I get another case like this, I'll know exactly how to state it.

THE WITNESS: Your words were better than mine.

THE COURT: Next question.

Q Mr. McCarty, do you have a view that as risk rises, interest rates go up?

It's really a basis of the capital markets. Risk, sometimes called credit risk, is a representation of the probability of default. We call it PD for short and so as PD goes up, you have to compensate for the potential for loss and to do that, you raise the interest rate.

THE COURT: nd you didn't learn that from me, right? You already knew that, right?

THE WITNESS: I did.

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Q Mr. McCarty, is there a way to measure the differential you just described?
The differential in what? If you would just clarify for me.
Q s risk goes up, is there a way to measure the differential in a loan when there's differential in risk?
There is. There's reg agencies that exist. The banks all conform to the same, so you have a probability default very very low, nearly zero. It is a credit and if you have a probability of default that is five percent, that's a BB credit. nd there's gradations all along, so people trade based on those analysis of the statements and whether they have a high probability default or a low probability.
Q nd do those ratings apply to debt in all of its forms?
It does. Bonds, loans, notes, convertibles. It is the whole spectrum of debt.
Q nd did you conduct an analysis in this case of the risk differential from the various loans that are at issue here?
I did.
Q How did you perform that analysis?
I looked at the internal documents by Deutsche Bank of analyzing first the credit level of the guarantor versus the credit level of the collateral, the project itself without a guaranty.
Q If we could take a step back for just a moment.

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What determines the interest rate that a bank will charge for a particular loan?
It varies. The first thing is the cost of their funds. Then they put on a cost of servicing those funds and then the most key element is the risk premium. In the case of , there's very little risk premium. I did T&T's last debt financing back before I was independent and they had a rate that was very similar to the U.S. Government rate, a risk-free rate. If there is a higher rate for premium, the interest rate goes up based on that premium.
Q nd just to unpack some of what you said, you said a cost of funds for the bank is one element in what the interest rate is charged. What is the cost of funds?
It varies by type of debt it is. If it's a personal guaranty where there's very little risk, or credit, the cost of funds is very low for the bank because they don't have to set aside much equity. The Basel II mandated that the bank set aside equity based on the rating of the particular loan. So if you have a rated loan, you set aside very little equity. That means your cost of providing the money and the funds to the loan is very low.
Q nd you said that the most important part was the risk premium. Could you explain what you mean by that?
The risk premium is really, again, your own interpretation of the credit risk of the enterprise you're

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lending to, the individual, or the project, or some other structure.
Q nd did you identify discussion of the risk premium on the loans in this case?
I did, independently and also with reviewing the Deutsche Bank material.
Q nd what conclusions did you reach?
Conclusion I reached that the loans with the guaranty, the three principal trophy ones, Doral, OPO and Chicago, were assigned a very low risk level an level or better, a strong and a risk premium of almost zero by PWM.
Q Were there any other risk analyses that you found in your review of the Deutsche Bank materials?
I did. In reading through the different credit memos, they did an independent analysis of the collateral which is short for the project-based credit availability and that one was a BB connoting that the probabilities independent without the guaranty held a relatively high risk.
BB is considered the first step of non-investment grade. If you go to BBB, it is investment grade. So they determined the projects were non-investment grade BB.
Q When you say the projects were determined to be non-investment grade BB, which projects were those?
The three I mentioned; Doral, OPO and Chicago.
Q nd was there a reason the bank determined those were

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BB?
I think so. I mean, I know Doral. I've been there, played the Blue Monster a few times, and it was a project turnaround. It had been brought out of bankruptcy. MSR owned it, was selling it in bankruptcy. It needed a large amount of spending and a change in the image, so when you're doing a turnaround project like that, that's a risk item that a banker would look at and say that's a risky project. OPO was a startup. It was a conversion of a facility to a hotel for the first time. Startups carry their own risk premium.
Q nd did you identify any impacts in the difference between these risks?
Significant. The difference in the strong credit and BB credit is many basis points, so I'm going -- I'm sorry for using basis points. Basis points are ticks in a one percent, so 100 basis points is one percent. I'll try to use percents. It's -- it can be as much as seven or eight percent difference between the two different credit ratings.
Q nd what is reflected in that difference between the interest rates?
It is a difference in risk. gain, the probability default of the two. Historically, banks have been very willing to lend to high-net worth individuals at low rates because they get repaid so...
Q You described that there was -- I think you said there

may be as much as an eight-percent difference. Here, did you conduct an analysis to determine the interest rate differential between the BB credit and the credit?

We did. We did several different analysis. We broke down the analysis that Deutsche Bank had done of the projects. We went out and looked at -- it is hard to find a direct comparable, so there is no direct comparable, but we saw things like ClubCorp which was a ten percent issuer, BB credit. We did a scan of all BB credits of similar size and they all centered around kind of nine, ten percent at that time, the time of the loans.

Q ny other confirmation that you were able to obtain as to your analysis of the interest rates?

fter we did the comparable analysis and market sweep, we then looked at documents that CRE had proposed to finance the project without a guaranty.

Q If we could go back to what I believe is now Plaintiff's Demonstrative 4, if I could direct your attention to the top row, which is Doral, could you tell me what is your understanding of the Doral project?

Doral project is a large resort in South Florida. It involves several golf courses and a spa facility and a large number of bungalows. The spin was estimated to be something like $200 million to rehab the facility, make it a viable, long-term project.

Q nd if we look at the top row, the line that says, "actual INT percent," what is reflected in that row?

We took that straight from the Trump statements. This is the actual interest rate paid in each of the years and the same is true of the loan amounts, that they're exactly the amounts that were outstanding for each of the years.

Q When you say "loan amount," you're referring to the row that says, "loan MT DJ"?

Yes.

Q Can you tell us what is reflected in the "low CRE INT percentage"?

We -- after we did the market analysis and determined that the BB credit was in a tight band, we then decided that the CRE proposals for each of the projects, since they knew more about the projects than the market would have, was probably the best representative, contemporaneous data for an interest rate for the projects without the guaranty.

Q nd if we look at the numbers, they're spread out in the row "CRE INT," it stays at ten percent from 2014 through 2022. Why does the rate stay the same?

We made a decision to keep it. The line above it is floating with LIBOR pricing. We decided in CRE to keep it straight for each of the projects as a conservative measure. We were concerned that with interest rates going up in '17, '18 and '19, that it would present too dramatic a number, so we decided

to just flat rate it at the original rate.

(Continued on the next page.)

Q nd just to make sure I'm understanding correctly, you said the line above is a floating rate. This is the numbers reflected in the row, "actual INT percentage rate." That's the row you're referring to?

That's correct. The loans were made as a premium to LIBOR and so as LIBOR went up, the interest paid went up and when LIBOR went down, interest payments go down.

Q nd so if we look at the bottom row under the Doral section, it says "interest delta." What is reflected in that row?

That's the difference between the first two rows and dollar amounts and so each year that's the calculation of the difference in if it's project financed versus guaranteed finance and that differential is totalled up for Doral on the far right, 72,908,308.

Q nd what is the basis for the G P in the interest rates you've identified here?

The basis is that the financial statements as provided wouldn't allow PWM along with conditions of the projects to have made the loans and that the true rate of risk premium was the CRE line. So the differential between the two was the -- my calculation lost interest due to the debt difference.

Q Do you have --

MR. KISE: Objection. Move to strike the answer the answer, assumes facts not in evidence, Your Honor.

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MR. W LL CE: What facts are --
MR. KISE: The real banks in the real world that actually evaluated the loan have not testified in this courtroom at trial that in fact they would not have approved the loans and at those levels. So this witness is assuming facts that are not in evidence at all. He's introducing new facts with that testimony -- that answer.
MR. W LL CE: I will make two points. One is an expert is allowed to rely upon hearsay and evidence that is not in the record. I will also note that the terms of the offers that were made by the -- that were made by Deutsche Bank were not disputed at summary judgments. We are entitled to disgorgement potentially coming out of the summary judgment decision and hence, it is part of the record as something that an expert is perfectly capable of considering.
MR. KISE: Your Honor, if the government is asking this witness to do the math between the two numbers and testify that that's the mathematical difference, that's fine, but that wasn't the question. That wasn't the answer that was given. The answer that was given is that Private Wealth Management would not have made this loan on these terms based on his analysis and there is no evidence from the real banks that operate in the real word that did their own real evaluation. That's what's in the record right now.

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MR. W LL CE: Based on fraudulent financial statements. This is the hurdle you guys can --
MR. KISE: Can I finish my objection, please?
THE COURT: Mr. Wallace, please don't interrupt.
MR. W LL CE: ll right.
MR. KISE: nd so the government as I say is perfectly capable of eliciting that testimony from the bank. It's their burden to do it. It's not my burden to undo it. It's their burden to do that. They were perfectly capable of doing that. They didn't because we all know from the record that isn't before the Court that the answer would not have been favorable to them. So that's why they didn't do it. So they now have a witness who is an expert and I don't quarrel with his qualifications in that regard, but he is assuming facts not in evidence which is clearly not appropriate under the case law that we cited. There is no record evidence. He's -- as the Ortiz case that we discussed, there are two eyewitnesss and this is an accident reconstructionist that's coming in.
I'll wait so you can read the note that Ms. Greenfield just handed you.
THE COURT: What do I want for dinner?
MR. KISE: Right. That was yesterday.
THE COURT: Well, we could ask the witness what facts he's assuming.

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MR. W LL CE: Your Honor, I actually don't think he is assuming any facts and the record does show there was an offer made. I think he is describing his knowledge and his assessment of whether the loans would have been made, but ultimately, we are asking him to measure the difference between a market rate without a statement of financial condition and the rate that they obtained with the statement of financial condition. This is not an element of a 6312 claim but it is to provide assistance to the Court in determining what was the potential profit that came from the fraudulent activity that we've already identified and established. So it is not an element of 6312. It is not speculation and it is based on the facts that are in the record at this point as to what -- how these loans are being priced by different groups. I think he has also said he compared this to the market rates, which I -- was going to actually be my next question.
So I think that this is a basis. If they want to suggest that it's not reliable, that he should rely on other information, that's perfectly fine. It seems like they have a very large binder for cross examination they can go through and they can make an argument on it as to what the appropriate measure of disgorgement might be, but at this point he's basing his opinions on facts that are in the record.

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THE COURT: Well, I think we need to ask him what facts, if any, he assumed. Then we decide whether they're in the record.
s for whether experts are allowed to rely on hearsay, that's a subtle one. I don't think I've come across yet. Do you have any authority for that? Can you get authority for that?
MR. KISE: Your Honor, I'm not even suggesting it's relying on hearsay. What I'm saying is that the facts don't exist at all, that they haven't established that the gains are ill gotten in the first place because the bank itself has not provided that testimony.
Just because the statements may have contained falsities based on Your Honor's ruling, which you know we disagree with, but just because the statements may have contained inaccuracies, falsities, how you want to describe it does not mean that the bank in fact would have done something different. nd until that is established, the gains are not ill gotten because if the bank were to say that even knowing what I know today, yes, I would have likely made those loans and Your Honor knows we're going to hear testimony from that same bank that's going to say that Mr. Trump would have qualified for the private wealth management group anyway. So the idea that whether it's two and a half billion, whether it's one billion, whether it's

500 million. So the question is whether the bank who had the responsibility in the real world to make the credit determination to determine the probability of default as this expert has just testified to, made that decision and with the revised information would they have made the same decision? I don't know whether this witness would have made the same decision, but that's not what's at issue here. What's at issue here is whether the bank made the decision or would have made a different decision or would have actually priced the loans differently considering all of the factors. nd yes, we will get to a lot of other specific items in cross examination, but this is a fundamental question and this witness is assuming that the bank -- he's substituting his judgment. He's saying well, based on what I see I wouldn't have approved it, okay, that's great. But he doesn't get to make that call unless the bank says they wouldn't have approved it. Back to the Ortiz case and the other cases that we cited.

MR. W LL CE: I don't think it is our obligation to have a loan officer from Deutsche Bank sit here and listen to all the evidence that comes in at trial and then say yes, so let me go back and figure out what would have really happened if I had known all the lies that Donald Trump was telling me. That's not how this works. nd Mr. Kise is rehashing the same arguments we made yesterday when they

made their motion to preclude Mr. McCarty's testimony. This is a measure of the benefit they obtained. That is perfectly reasonable, expert testimony.

We do not need to prove the counterfactual of we reconstruct every piece of his financial statements. We showed that he used fraudulent financial statements in business to obtain these loans.

The measure of the benefit is perfectly reasonable expert testimony. It is not something that we have to establish by going back to each of the loan officers who are making the decision at the time these loans were made.

MR. KISE: Of course it is, Your Honor.

THE COURT: Hold on. I'm arguing for you. I still want to know what he based his answer on.

MR. W LL CE: I'm happy to get that information, but we've now drifted into a legal argument over essentially the same issues we were discussing yesterday. I'm happy to continue with the exam and ask Mr. McCarty to repeat what he based his decision on what the CRE INT percentage.

THE COURT: It's not even a legal argument. It's more of a mathematical argument. nyway, why don't you given Mr. Kise's objection, which I'll sustain without prejudice to further examination --

MR. W LL CE: I'm sorry, what's been sustained?

THE COURT: His objection at this point on the

ground that I don't know what he was relying on.

MR. W LL CE: I believe he's testified to it, but I'll ask you -- I'll cover it again, Your Honor.

Q Mr. McCarty, how did you calculate the CRE INT number?

I took the loan proposal from Deutsche Bank which was LIBOR + 8 and with a floor of LIBOR 2, so at ten percent rate proposed in their term sheet and I used that number.

Q nd do you have a view -- any other information you considered in reaching your conclusion as to what that interest rate was?

I might have just to complete for the whole spreadsheet. The term is the actual term of the loan. I used the same term of the loan, the loan amounts of the actual loan amounts and the differential is just the difference in the actual interest paid and the interest proposed by CRE, which I validated in the market comparison as a market rate. So you could put market rate there instead of CRE the same way.

Q So if I'm understanding correctly, then the actual INT reflects the rate that Mr. Trump was able to obtain using his financial statement?

That's actually off their statements.

Q Okay. nd the CRE INT is just the interest rate that he was -- that one would obtain without using a personal guaranty. Is that a correct analysis?

From Deutsche Bank invalidated in the market, yes.

THE COURT: So objection now overruled subject to cross examination. He said where he got the numbers.

MR. KISE: Right. I just want to be clear that he's testifying as to the mathematics, not to the ill gotten nature of the gain. He's just testifying these are the differences and the numbers.

MR. W LL CE: He is testifying as to what he is testifying to. There is someone here writing it all down. If we have a legal dispute as to whether that is an appropriate measure of disgorgement, that's our closing arguments or post-trial briefing, but the evidence of the work he did is the evidence of the work he did.

THE COURT: Mr. Kise, you're asking -- you want to be clear what he testified to. The record will show what he testified to.

MR. KISE: But he's testifying to mathematics. That's acceptable. He can put up numbers on the board and testify to them, but our objection goes right to the point he can't substitute his judgment which is what the one question that we talked about that where this whole colloquy began. The one question is the loans -- they're not ill gotten gains if the bank doesn't testify that they would have done -- they would have not done anything differently if the bank would have acted the same under the circumstances. Then the gains are not ill gotten.

s long as this witness is not testifying that the gains were not ill gotten, that this is -- if he's just testifying these are math numbers and there was one number that was the actual and there is one number that was the CRE, then that's fine. But I don't believe that that's where this is going and I don't believe that's what this witness is testifying to.

MR. W LL CE: Well, I believe the witness has said he is relying upon the Court's determination and summary judgment. I will say that if this is, again, legal argument as to whether this is an appropriate measure of damages. nd so I would like to continue to put in this evidence and we can continue our disagreements as to whether or not this establishes an improper benefit to Mr. Trump and the Trump Organization, but that the testimony is the testimony.

THE COURT: Yes, objection overruled. Let's move on.

MR. KISE: Okay.

Q Mr. McCarty, I'd like to move on to the next row, the OPO loan. Can you tell us what's your understanding of the OPO project?

OPO project was the Old Post Office in Washington, D.C.. That was put out for bid for converting it to a hotel. Series of bidders put forward proposals and the Trump Organization ultimately won the right to convert and hold the

lease.

Q Okay. nd so in this analysis what does the row "actual INT percentage" reflect?

It's the same. This is off the June statements of Trump Organization actual interest paid.

Q Okay. nd the row marked "CRE INT," how did you determine the CRE INT for this loan?

Unlike Doral and Chicago, which are very forward and similar, we had an issue with OPO because the proposal from Deutsche Bank included what we wonderfully call in my business bells and whistles which is intended to be a representation of other terms and conditions that have economic effect that aren't in the interest rate.

Q nd what were some of the bells and whistles you had to consider?

The first one, the major one was it was for a smaller amount than the proposal, the actual proposal by $30 million. So it required -- the Trump Organization would have required the Trump Organization to put up $30 million more equity into the project to complete it.

Q nd what impact did the fact that the Trump Organization had to put in an additional $30 million of equity, what effect did that have on your analysis?

Well, some people don't realize it, but equity has a cost and the cost of equity can be determined and it's actually

more expensive than debt. So we took a shot at cost to capital for the equity and adjusted the interest rate for that additional required equity.

Q nd how did you do that?

We took a cost to capital for project finance real estate-related average which is like 12 percent. So we took 12 percent on the 30 million to come back to an add on to get to a comparable rate.

Q ny other bells and whistles that you had to consider?

This had a series of -- this was the only one that we found that was a proposed syndicated loan and syndicated loans have fees attached to them, one percent up front and three percent on syndication. So this had four percent fees that were not included in the other transactions.

Q nd just to make sure the record is clear what does it mean to syndicate a loan?

One bank originates it. They get an origination fee. They go out to distribute it to other banks. They have an agreement with the borrower they're allowed to sell the loans to other banks.

Q ny other bells and whistles that you had to consider?

There are -- this is cash sweeps and low yield categories that basically restricted the ability to take cash out of the business and we had to take account of the differential.

Q nd could you just describe for us what is a cash sweep?

This is basically a lockbox. I think people might know that better where all the cash that comes into the organization, goes to a lockbox and is only released by the bank when and if the other obligations have been satisfied.

Q nd so taking all those factors into account, what did you determine about the CRE interest rate?

On a comparable basis it was eight percent we believe.

Q nd were you able to determine whether or not that was a market rate?

We did. We went out and did a similar comparable run through for -- again, there is nothing directly comparable to OPO, but we believe that in kind of the center of the comparable group.

Q nd so just so I'm understanding, once again, the actual interest rate row shows the loan that Mr. Trump and the Trump Organization were able to obtain using personal guaranty and the financial statement; is that correct?

That's correct.

Q nd so then the CRE interest rate percentage row shows your assessment of what the market rate would be for a loan with no personal guaranty whatsoever?

That's correct.

Q Once again, you used a fixed rate throughout the term?

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We did. We ran it with a floating rate, but it was significantly higher, so we decided to be conservative and keep it flat.

Q I think you described this when you were talking about the Doral loan as well that is because there was variation in the LIBOR rate during the term of this loan; is that correct?

That's correct. nd it would have been a significantly higher, several points higher for several of the years.

Q nd so what was the total interest differential on the OPO property?

Well, using the same loan amounts as from their books. We came up with an interest differential lost interest of 53,423,209.

Q Okay.

MR. KISE: Same objection, Your Honor.

THE COURT: Same ruling.

I just want to point out one other thing which goes back to our earlier discussions. I believe you said your only objection or your main objection was to any reading into what he said that these gains are ill gotten. I decided they were ill gotten. He's not deciding that. He's deciding the number.

MR. KISE: Yes, Your Honor, but the only basis for an expert to testify is in this circumstance as we went over yesterday, I'm not going to belabor it, but is where the

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record provides an opening for that if there is no record evidence that the gains were ill gotten, meaning the bank itself in the real world with their real analysis does not say that they would have in fact done something different, then none of this comes in at all because it's like the accident reconstructionist being brought in in the case that I cited where there is two eyewitnesss to the accident.

The expert simply cannot contradict the record evidence. The expert can opine on the record evidence, but he or she cannot contradict the record evidence.

THE COURT: Overruled. nd five-minute warning.

MR. W LL CE: Thank you, Your Honor.

Q Mr. McCarty, just to move on to the next row. It states "Chicago." Can you tell me what is your understanding of what the Chicago loan is?

There are actually two loans in Chicago, an and a B and we actually didn't do the because it was retired early, so we only did the B loan.

Q nd what was the B loan that you analyzed?

This is related to a hotel condominium complex in Chicago that Deutsche Bank had lent to previously.

Q Okay. nd how did you calculate the -- let me just backup. Was your analysis for the Chicago loan similar to the analysis you conducted for the other loans?

Yes. It's just exactly like Doral.

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Q nd so how did you calculate the CRE interest rate for the Chicago loan?

The CRE was from the term sheet that Deutsche Bank CRE provided to them. It had several iterations. I saw a redline version of it, so I think it had been interactively provided and so that was the rate. gain, we did it flat. This was the LIBOR plus the stated premium that CRE offered on a non-guaranteed basis.

Q Okay. nd in the far right, what was your calculation as to the total interest benefit on the Chicago property?

It was 17,443,359.

MR. KISE: Same objection. Interest benefit.

THE COURT: Same ruling. Overruled.

Q Mr. McCarty, do you recall being deposed by the defendant in this case?

I do.

Q Do you recall the defendants asking you about a default rate on these three loans?

I do.

Q Did you consider as part of your work whether the default rate was an appropriate means to establish lost interest?

I did.

Q nd what did you -- what conclusion did you reach?

MR. KISE: Objection, Your Honor. gain, now he's

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going outside even the documents. I mean, the document the contract, the agreement between the parties specifies a default rate. That was agreed to between these sophisticated parties. It was negotiated carefully. There is no basis in this record for an expert to come in and testify that that default rate wouldn't otherwise apply. It's just not -- there is no foundation at all for that. That's -- that's beyond absurd to have a witness testify directly contrary to the agreement of the parties.

The parties' agreement forms the foundation of the relationship and it was up to the bank to exercise its rights if it felt there was a default or if it didn't think there was a default or if it didn't think there was a default that it cared about because we're talking about performing loans, then they would have done nothing, but there is no foundation for this witness to substitute his judgment for what's actually in the documents.

THE COURT: You said there was an agreement as to the default rate?

MR. KISE: There is a -- there is a --

THE COURT: That was a yes or no.

MR. KISE: Yes.

THE COURT: Okay. Was there an agreement that it had to be applied?

MR. KISE: No. It was up to the bank's discretion.

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MR. W LL CE: nd, Your Honor, I'm just going to remind you the rules around disgorgement provide that it should be an approximation of what the benefit was. I'm just asking him now if his view is whether the default rate represented an appropriate way to establish lost interest. I think we have an objection.

THE COURT: Overruled.

MR. KISE: There are -- Your Honor, they're asking this witness to substitute its judgment for what was negotiated between the parties. That's completely improper. There is absolutely no basis for that.

THE COURT: re you -- Mr. Wallace, are you doing what you're being accused of?

MR. KISE: It's exactly what he's doing.

THE COURT: re you violating an agreement between the parties?

MR. W LL CE: I just want to make sure I have the question proper.

No.

MR. KISE: He's disregarding it. That's the record evidence. There is an agreement between the parties and he's asking this witness if that's an appropriate measure the parties negotiated that as the appropriate measure. You can't just throw that out by some expert.

MR. W LL CE: Mr. McCarty has his opinion as to

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whether it's -- he's presenting that to Your Honor. Mr. Kise has his arguments as to why it's not an appropriate measure and it's ultimately a decision for the Court to make. I don't think that's an actual objection to this evidence coming in now.

THE COURT: Objection.

MR. KISE: There is an objection.

THE COURT: ll right. Overruled.

MR. W LL CE: I'll try to get this in the 30 seconds I have.

Q Mr. McCarty, did you make a consideration as to whether the default rate was an appropriate means to establish lost interest?

I've negotiated many dozens of loan documents that include default rates. Default rates are a penalty rate that is used to force compliance of covenants. It is not a measure of ill gotten gains or anything else. It's purely a penalty rate. It's usually standard four percent lately and I didn't consider it something that would be viable for the measurement I was trying to do.

Q Did you analyze --

MR. KISE: Objection. Move to strike. ssumes facts not in evidence.

THE COURT: Overruled. nd to borrow a phrase or two from Mr. Wallace, he's just giving his opinion. He can

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give an opinion even though you've agreed to something else. He's just saying he didn't consider it. He didn't say he's considered it at another number but for a different reason. He said he didn't consider it.

MR. KISE: It's not appropriate to even introduce into the record and it's not appropriate for the Court to consider it that it contravenes the evidence in the record if there is no foundation for it.

Q Did you actually conduct an analysis of what the differential would have been if you'd used the penalty rate?

I did.

Q nd what --

MR. KISE: Objection.

Q What knowledge did you come to?

It's a number that's larger than this.

Q So it's larger than the numbers that we have on the differential in the loans here?

The total number, yes.

THE COURT: You see, he's giving you a break.

MR. W LL CE: I think speaking of breaks, Your Honor.

THE COURT: I wish I had thought of that.

ll right. Let's say we'll call it a ten-minute break over the next 17 minutes, so I'll see you all at quarter to 12.

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(Whereupon, there is a recess in the proceedings.)

Transcript continues on the following page....

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THE COURT OFFICER: ll rise. Part 37 is back in session. Be seated and come to order.
THE COURT: Mr. Wallace, how much longer?
MR. W LL CE: For my direct, I would say five to ten minutes at most.
THE COURT: Good.
Do you have any idea how long the cross-examination will be if he has five to ten minutes?
MR. KISE: I would say probably three hours, could be two. We are going to have -- we're going to have the lunch break in between. That will help us review.
THE COURT: Depends on what we eat.
MR. KISE: Right.
THE WITNESS: Witness entering.
THE COURT: Let's go.
Q It is still morning, Mr. McCarty.
MR. W LL CE: If we could put Plaintiff's Demonstrative 4 back up on the screen, please.
Q Mr. McCarty, just looking to clarify one thing about your calculations on Doral and Chicago.
Under the year 2014, does that represent the full year calculation of interest or some other time period?
No. I probably should footnote that. s I started to say in the beginning, we modified this for the judge's ruling of July 13, 2014 as a no-look-back date, so that includes only

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July 14th forward.
Q Thank you. If we go down to the bottom row, 40 Wall. First, can you give me your understanding of this loan transaction?
This was a re-financing of a Capital One mortgage that was done through Ladder Capital and for the 40 Wall Street building downtown Manhattan.
Q nd how did you calculate the lost interest for this loan?
gain, starting off, we took the actual interest off the books. This was a fixed rate loan and for the second one, we took -- the first one is Ladder Capital, not Deutsche Bank. There's a difference here. That's Ladder Capital's actual interest paid and the second line is an assumption we made that with the financial statements being determined to be false and misleading, they wouldn't have been able to get the Ladder Capital loan done and that they extended their existing facility with Capital One for the period.
MR. KISE: Same objection. Move to strike, Your Honor.
THE COURT: Overruled.
Q Now, the loan to -- from -- for 40 Wall Street, that was not a guaranteed loan, correct?
There was usage of the financial statements material in the offering material by Ladder Capital, so that's why we viewed

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it as something that would be impinged.
Q Were there any other transactions that you were asked to look at?
We were asked to look at the Bryn Mawr loan, which was a smaller loan, and we determined that it really wasn't material to the discussion, so we didn't put it in the calculation.
Q nd when you say "material," how did you interpret that to mean?
It was less than a million dollars of impact.
Q Can I ask you the numbers reflected in your table, do they reflect compound interest or simple interest?
It's simple interest. There's no time value of money to these at all.
Q nd in your work compiling these numbers, did you consider any prejudgment interest in reaching these calculations?
No, we did not.
MR. W LL CE: Nothing further, Your Honor.
THE COURT: Okay. Let's start the cross-examination.
CROSS-EX MIN TION
BY MR. SU REZ:
Q Good morning, Mr. McCarty.
Good morning, sir.
MR. SU REZ: Is this on?

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THE COURT: No. There we go.
MR. SU REZ: Now can you hear me?
THE COURT: I can.
MR. SU REZ: There we go.
Q Good morning, Mr. McCarty.
Banks historically have been willing to lend to high-net worth individuals because they get repaid. That's what you said on your direct, correct?
That's correct.
Q nd that's exactly what happened here, isn't it?
I believe everybody got repaid, yes.
Q Okay. The Deutsche Bank loans, OPO Chicago and Doral, they were loans that were made to borrowers guaranteed by a high-net worth individual and they got repaid, right?
Yes.
THE COURT: I'll give you some leeway, but this has been admitted, conceded, stipulated, et cetera, et cetera, so let's not spend a lot of time.
MR. SU REZ: The key difference here, Your Honor, is that he testified on his direct that banks have historically been willing to lend to high-net worth individuals because they get repaid.
THE COURT: Go ahead.
Q That's correct?
That's correct.

Q nd that specifically happens in the private wealth management environment, correct?
That's where most high-net worth individual loans are made, yes.
Q nd you've never worked in a private wealth group of a bank, correct?
I've worked in the banks that have private wealth, but I've never been an officer in a private wealth management group.
Q So long story short, you've never worked in the private wealth management group of a bank, right?
No, not in the group.
Q You've never worked at Deutsche Bank, correct?
No.
Q You've never worked at Ladder Capital, right?
No.
Q Before you got involved in this case, you had never read the Deutsche Bank credit policies, correct?
That one, I may have. I've done several transactions with Deutsche Bank and I believe I've probably seen it one time or another.
Q Had you reviewed the Deutsche Bank private wealth group policies?
No. gain, I was a customer of private wealth management for a dozen or so years, so I might have seen it as part of my interaction as a customer.

Q Your testimony is that as a customer of the private wealth group, you reviewed their private wealth management lending policies?
I was good friends with Tom Bowers who ran that group and set it up, so Tom Bowers, so I might have seen it. I don't recall it today.
Q But you certainly have no expertise in them, correct?
Clarify for me what expertise you're looking for.
Q Were you a specialist in the Deutsche Bank private wealth lending policies?
No.
Q Were you a specialist in the Deutsche Bank credit policies?
s they consider consistent with Basel II, I'm familiar with their policies, yes.
Q But you're not familiar prior to becoming involved with this case specifically with the Deutsche Bank credit policies, right?
With Deutsche Bank specifically, no.
Q Okay. nd the same is true for Ladder Capital, correct?
Correct.
Q The New York ttorney General, I believe, is paying you $950 an hour for your work on this case, correct?
That's my standard rate, yes.

Q s of your deposition, the People of the State of New York has paid you approximately $300,000, correct?
That's about right.
Q How much more have you been paid since your deposition?
Well, I haven't been paid any more than that. I may have billed some.
Q How much have you billed since your deposition?
I don't really recall, but it might be 40 or $50,000.
Q So in total, you've been paid to bill the ttorney General People of the State of New York over $750,000 for your testimony today, correct?
The math -- 300,000 plus 40 or 50.
Q I heard 450. I'm sorry.
40 or 50.
Q I'm having a hard time hearing.
Sorry about that. I'll get closer to the mic.
Q pproximately $400,000 for your work in this case?
little less than that, but yes.
Q How much more do you expect to charge the People of the State of New York for your work in this case?
Other than for my testimony today, I don't anticipate any more.
Q Since your deposition, have you read any additional materials?
Not that I can recall.

Q nd have you reviewed any of the trial testimony in this case?
I haven't seen any of the daily transcripts, no.
Q I notice you were here for the first day of Mr. Haigh's testimony; is that correct?
Partial day. I think I had the morning.
Q You didn't see the entirety of the Mr. Haigh's testimony; is that correct?
No.
THE COURT: That's another example of a question asked in the negative. The response is ambiguous. "You didn't do it, did you, no." That could mean "No, I didn't do it or "No, you're wrong. I did it." So I suggest to everybody again, ask questions in the positive. "Did you," not "didn't you."
Q Is it correct that you were not here for the entirety of Mr. Haigh's testimony?
I think I left after lunch.
Q You were retained through Kroll in this case?
Excuse me? I didn't hear your question.
Q Were you retained through Kroll, Kroll & ssociates?
K-R-O-L-L. I was retained by the ttorney General's office and through Kroll, yes.
Q That wasn't disclosed in your expert disclosures, correct?

I'm not aware if it was or not.
Q You wrote your expert disclosures, correct?
I just don't recall whether it mentioned Kroll or not.
Q You were the author of the expert disclosures that you submitted to this Court?
Yes.
Q Did anyone else help you in preparing those expert disclosures?
Probably one of my associates, yes.
Q Who typed them out?
Probably one of my associates.
Q Were they reviewed by the New York ttorney General prior to submitting them to the Court?
I believe so, yes.
Q Have you reviewed any other materials introduced at trial prior to your testimony today?
What time frame are you referring to?
Q Since the inception of trial.
No, I don't believe so.
Q Nobody has sent you exhibits that have been introduced?
No.
Q Nobody has sent you trial transcripts? I believe you said you didn't read them.
No.
Q But others did help you prepare the opinions that

you're offering here today at trial, correct?
No, they're my opinions.
Q That wasn't my question. Others helped you prepare them, correct?
Not my opinions. They helped me do the research and analysis. My opinions are from myself.
Q So others helped you prepare the research and analysis that support the opinions that you gave today?
Parts of them that I gave them to do.
Q In connection with giving your opinions here today, did you read the Deutsche Bank credit policies?
I've read them before.
Q In connection with the testimony that you are giving here today, did you read the Deutsche Bank credit policies, yes or no?
Yes.
Q In connection with the testimony that you're giving here today, did you read the Deutsche Bank lending policies?
Yes.
Q In connection with the testimony you're giving here today, did you read the Ladder Capital lending policies?
No, I don't believe I read -- since it was an offering, I read the offering material, not the lending policy.
Q Did you review the Ladder Capital lending policies?
No.

Q How much time did you spend reviewing the Deutsche Bank lending and credit policies prior to your testimony here today?
Very hard to say. It's been a while, so I don't really have a recollection how long.
Q You don't remember how long you spent looking at them?
No.
Q Or when you looked at them?
No. I looked at them prior to my submission of my expert report, but I don't really recall how long.
Q nd that was only last July, right?
ctually, I think my report was May 26th.
Q Okay. You testified in July in a deposition?
Deposition, yes.
Q So as recently as May of this year, you reviewed the Deutsche Bank credit and lending policies, but you don't remember how much time you spent looking at them, correct?
No, I don't.
Q You were assisted in the preparation of the research and analysis that supports your opinions here today by Kroll & ssociates, right?
That's correct.
Q nd by another gentleman at your firm named Michael Espinal; is that correct?
That's correct.
Q nd Mr. Espinal and Kroll determined the documents that

you would review in this case, correct?
No. They responded to my questions and provided documents related to my questions.
Q They acted as a filter of information, correct?
They had a knowledge base of the production that was useful, save me time in looking through all the documents.
Q Did they act as a filter of information?
No, I don't believe so. They responded to my questions.
Q Because those were your words at your deposition. You said that they were a filter of information.
I think a more accurate portrayal would be that they responded to my questions for documents.
Q But you don't doubt that you referred to it as a filter of information?
I may have, yes.
Q You directed them to provide you with loan agreements, correct?
Yes.
Q nd annual reviews, correct?
Credit reviews, yes.
Q Credit reviews. lso known as credit memos, right?
That's right.
Q nd loan documents?
Correct.

That's right.
Q Personal guarantees, correct?
They were part of the documents.
Q ll right. nd you reviewed all of these documents and understood them, right?
I kind of seen the same thing before, so it is pretty easy to understand.
Q They are pretty easy to understand?
If you've done them hundreds of times.
Q Okay. nd who prepared these documents for your review? Who created the universe of documents for you to review? It was the New York ttorney General, correct?
I assume it was from the production from the case.
Q Did you review Deutsche Bank's entire production in this case?
No, I did not.
Q Did you review any of Mazars' production in this case?
I believe some of it, but I didn't -- my focus wasn't on the accounting aspect. Mr. Lewis took that, so I don't think I delved deeply into the Mazars.
Q Did you review any of the testimony offered by Jack Weisselberg in the trial in this matter?
Not in the trial, no. I think I had looked at deposition material.
Q You never interviewed any of the Deutsche Bank

executives that were involved in the relevant loan transactions, correct?
No.
Q You never interviewed anyone from Mazars, correct?
No.
Q You never introduced anyone from Ladder Capital, right?
Nope.
Q You never interviewed anyone from the Trump Organization either, correct?
Nope.
THE COURT: By the way, that was four questions in the negative in a row. I wish you would stop doing that. These answers are ambiguous. "You didn't do that, did you"? No could mean "No, I didn't do that, or it could mean "No, you're wrong. I did that."
Q Did you ever interview anyone from Deutsche Bank?
No.
Q Did you ever interview anyone from Ladder Capital?
No.
Q Did you ever interview anyone from Mazars?
No.
Q Did you ever interview anyone interest the Trump Organization?
No.
THE COURT: Thank you.

MR. SU REZ: Thank you, Your Honor. I appreciate it.
MR. SU REZ: Can we put the demonstrative exhibit back up, please.
Q These are the four loan transactions that you testified about today, correct?
That's correct. I think there was one where I testified about that we didn't include.
Q nd that's not subject of your grand total of lost interest, right?
That's correct. We judged it immaterial.
Q Let start with Doral. ctually, let's start with this chart. Did you prepare this chart?
I did.
Q You went on Excel and created the actual chart?
I do have a technical background. I can do Excel spreadsheets, yes.
Q Is that a yes?
That was a yes.
Q Okay. nd you reviewed the credit memo prepared in connection with the Doral transaction; is that correct?
I did.
MR. SU REZ: Can we pull up Plaintiff's Exhibit 293.
Q Do you recognize this document, sir?

I do.
Q Is it correct that this document reflects the bank's analysis of the Doral loan transaction?
I believe it does, yes.
MR. SU REZ: If we could turn to the following page and zoom in on collateral.
Q Would you agree with me that the collateral for the Doral loan transaction is a first mortgage lien and a first priority security interest in the resort including the borrower's fee, simple estate, all personal property, leases, rent, revenue, operating accounts, reserves, and all other related assets?
Yes, I believe that was true.
Q Did you review the Doral loan agreement?
I believe I read it, yes.
MR. SU REZ: Can we pull that up, please. That's Defendant's Exhibit 212.
Q Do you recognize this document?
Term loan agreement dated June 11, 2012 by and between Trump Endeavor as borrower and Deutsche Bank Trust Company mericas as lender.
Q Did you review this document in connection with preparing the opinions that you've offered in court today?
I did.
MR. SU REZ: Your Honor, we move to admit

Defendants' Exhibit 212.
THE COURT: Granted. It is in evidence.
nd Mr. McCarty, even closer to the mic, so that it could bite you.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 212.)
MR. SU REZ: I'd like to pull up Defendants' Exhibit 213.
Q Mr. McCarty, please identify this document.
This appears to be the first amendment to the Trump Endeavor agreement.
Q Did you review this document in connection with your representation of the opinions that you've offered in this case?
I believe so.
MR. SU REZ: Your Honor, we would like to move Defendants' Exhibit D213 in evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 213.)
MR. SU REZ: Please pull up defendants' premarked Exhibit D387.
Q Mr. McCarty, can you identify this document, please?
This is the second amendment to the term loan agreement.
MR. SU REZ: I believe we have an actual copy to

hand up now in a second.
Q Did you review this document in connection with the preparation of your opinions in this case?
I believe I read it, yes.
MR. SU REZ: Your Honor, we would like to move Exhibit 387.
MR. W LL CE: Evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 387.)
MR. SU REZ: Please pull up plaintiff's premarked Exhibit 2315.
Q Mr. McCarty, can you identify this document?
This is the third amendment to the term loan agreement.
Q nd is this a document that you reviewed in connection with the preparation of your expert opinions?
Yes, I believe it is.
MR. SU REZ: Your Honor, I'd move Exhibit 2315 in evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 2315.)
MR. SU REZ: I'd like to show the witness plaintiff's premarked Exhibit 1303, please.
THE COURT: Can we proceed with the question based

on what's on the screen?
Q Mr. McCarty, can you please identify this document?
This appears to be the guaranty from Donald J. Trump guarantor to Deutsche Bank Trust.
Q Did you review this document in connection with your opinions in this case?
I believe I reviewed it, yes.
MR. SU REZ: Your Honor, I would like to move Defendants' 1303 into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 1303.)
MR. SU REZ: Let's, please, pull up Defendants' Exhibit 917.
Q Do you recognize this document, Mr. McCarty?
I do. It's the first amendment to the guaranty.
Q Did you review this document in connection with the preparation of your opinions in this case?
I believe so, yes.
MR. SU REZ: Your Honor, I'd like to move Defendants' Exhibit 917 into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 917.)
MR. SU REZ: Please pull up Plaintiff's 1304.

Q Mr. McCarty, can you identify this document, please?
This appears to be the second amendment to the guaranty.
Q Did you review this document in connection with the preparation of your opinions in this case?
I believe so, yes.
MR. SU REZ: Your Honor, I'd move Plaintiff's Exhibit 1304 into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1304.)
MR. SU REZ: Defendants' 586, please.
Q Mr. McCarty, can you, please, identify this document?
The third amendment to the guaranty.
Q Did you review this document in connection with your preparation of your opinions in this case?
I believe so, yes.
MR. SU REZ: Your Honor, I'd like to move 586 into evidence.
THE COURT: Granted.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 586.)
MR. SU REZ: Please pull up Defendants' 916.
Q Mr. McCarty, can you, please, identify this document?
The fourth amendment to the guaranty.

Q Mr. McCarty, did you review this document in connection with your preparation of your opinions in this case?
I believe so, yes.
MR. SU REZ: Your Honor, I would like to move Exhibit 916 into evidence.
THE COURT: Granted.
(Whereupon, the Document was marked in evidence as Defendants' Exhibit 916.)
Q Mr. McCarty, in connection with your preparation of your opinions in this case, you became familiar with loan documents and the guaranty documents, correct?
For the economic terms that we needed to analyze, yes, but not on a complete basis.
Q Sorry?
For the economic terms that I needed to prepare my material I reviewed.
Q I didn't hear the second part of your answer.
Sorry. For the economic results that I needed to prepare my material is what I reviewed.
THE COURT: nd not on a complete basis I think he said.
MR. SU REZ: Not on a complete basis. Understood. Thank you.
Q But you understood how the economic terms worked, correct?

Yes, I was.
Q nd you understood that the Trump Park venue was not collateral pledged for this loan, correct?
That's correct.
Q You understood the Trump Tower was not collateral pledged for this loan, correct?
I think also Niketown wasn't either, so...
Q Okay. Niketown was not part of the collateral pledged, correct?
That's correct.
Q 40 Wall Street was not part of the collateral pledged in connection with this loan, correct?
I'm not certain of 40 Wall, but I don't have a recollection of it.
Q Well, earlier we went through the credit memo.
Right.
Q Described the collateral for the Trump Endeavor 12 loan, correct?
Right.
Q Was 40 Wall part of the collateral pledged for the Trump Endeavor 12 loan?
s I sit here, I don't recall whether it was or wasn't.
Q How about Seven Springs? Was Seven Springs pledged as collateral?
To the specific loan for Bryn Mawr, I believe it was.

Q No. We are talking about the Trump Endeavor 12 loan.
No. I'm sorry, it wasn't.
Q Specifically with respect to the Trump Endeavor 12 loan extended by Deutsche Bank, 40 Wall Street wasn't either, right?
I said I don't recall.
Q It wasn't reflected in the credit memos pledged collateral, correct?
I don't specifically recall whether it was or wasn't.
Q We just reviewed it a minute ago.
Yeah.
Q Do you want to me it back up?
No. It's okay. You're asking me whether I recalled it.
Q Okay. Was 40 Wall Street pledged as collateral for the Trump Endeavor 12 loan?
gain, I don't recall whether it was or not.
Q ll right. Let's pull up the credit memo again.
(Continued on the next page.)

Q Do you see Plaintiff's Exhibit 293?
Yes.
Q This is something that you reviewed?
Yes.
Q nd the second page describes the collateral.
MR. SU REZ: Can we blow it up?
Q "First mortgage lien on a first priority security interest in the resort, including the borrower's fee, simple estate, all personal property, leases, rents, revenue, operating accounts, reserves, and all other related assets." Do you see that?
I do.
Q Do you have any reason to believe that 40 Wall Street was pledged as collateral for this loan?
No.
THE COURT: Mr. Suarez and Mr. Kise, I see why this is going to take two or three hours. Every question -- some questions come with three four or more questions. There is no evidence that it was the collateral. He says he didn't remember. We saw this document already. Why are you so worried about whether it was or it wasn't? It wasn't as far as I can tell. If someone in the audience has evidence that it was pledged as collateral, raise your hand. Okay, nobody raised his or her hand. Please stop making one question into four or five.

MR. KISE: So, Your Honor, respectfully, I'm just going to, as I have before, object. You never interrupt the prosecution, you never give them speeches, you never limit their questions, you never limit them on time, so I'm just putting that on the record, Your Honor. I think it's unfair.

THE COURT: I stand by my criticism.

MR. SU REZ: Your Honor, I asked the witness a very simple question he was for whatever reason reluctant to give a very simple answer.

THE COURT: No, he did answer. He said he didn't remember that was the answer.

MR. SU REZ: That's even more concerning because we showed him the credit memo ten minutes ago.

THE COURT: It doesn't say and 40 Wall Street is not on the collateral. That was a very general and vague statement, but let's move on.

Q The airplanes owned by entities belonging to President Trump aren't part of the collateral either; right?

No, it doesn't appear to be, no.

THE COURT: Well, that's -- it says what the collateral is. I don't see the word "President's airplanes" phrased.

MR. SU REZ: Your Honor, he said it was really simple to read these credit memos. If they're so simple he

should be able to answer them.

THE COURT: They're so simple. You shouldn't have to ask him. That does not state the president's airplanes. That's why this is taking two or three hours.

Go ahead, Mr. Kise.

MR. KISE: Your Honor, we need to make our record with this witness. This witness is the only witness that they have that even hints at anything to do with ill gotten gains. Not going over that again, but we need to challenge his credibility, his memory, his ability to recite even simple things. I mean, all of that is at issue here. I mean, all of it. So I think we should be allowed -- you've allowed them the latitude of introducing him in the first place which I think is completely contrary to the case law as you know, and I respect your ruling. But we should be allowed some latitude. We've been going all of about 15 or 20 minutes. I just don't understand why we always get interrupted. It's becoming a bit of a pattern, respectfully.

THE COURT: I stand by my rulings and my statements.

Please continue. Let's not go over everything that Trump owned and ask the witness is it true that that's not part of the collateral. The collateral is listed there.

MR. SU REZ: Your Honor, I heard you on the first

day of trial when you asked me to then summarize it and do it in a more rapid manner for the subsequent entities. I'm going to do it on the Doral loan and I'll do it in a much more summary fashion on the other transactions.

THE COURT: Thank you.

Q The guarantor of personal -- withdrawn.

Mr. Trump's personal residences are not identified as collateral for this loan; correct?

That's correct.

Q nd in your review of the loan documents and the credit memos, would you agree with me that the personal guaranty on the Doral transaction was reduced to a ten percent level by ugust 3rd of 2015?

I think that's the right date. I realize it had a decrease in guaranty over time.

Q You understood that the guaranty burns down?

That's correct.

Q s the loan to value burns down?

That's correct.

Q The loan to value being the value of the collateral divided by the loan; correct?

That's what they do.

Q Okay. nd would you agree with me there was a certain point in time that President Trump, the guarantor, elected to retain a ten percent guaranty level on the Trump Endeavor 12

loan?

Yes, I think to keep an interest rate differential.

Q Let's talk about that interest rate differential.

MR. SU REZ: Can we please pull up Plaintiff's Exhibit 290 at the second page?

nd can we zoom into there the box that says "the revised terms" for the interest rate?

Q You see here it says that the interest rate is LIBOR plus 1.75 percent or prime minus .75 percent?

Yes.

Q nd when the guarantee level falls below ten percent it steps up to LIBOR + 2 percent or prime -50 basis points; correct?

That's correct.

Q half a percent; correct?

Correct.

Q I just want to establish that I'm using the same language. percentage point is a hundred basis points; a half a percent is 50 basis points?

Yes.

THE COURT: Please keep your voice up.

Q So you would agree with me that the loan agreement between Deutsche Bank and Trump Endeavor 12 provided that the interest rate would step up by 25 basis points when the guaranty was eliminated; correct?

That's correct.
Q nd the benefit to keeping the guaranty in place was a savings of 25 basis points; correct?
Per the agreement, yes.
Q ll right. Let's now take a look at the loan to 401 North Wabash.
MR. SU REZ: If we could pull up Plaintiff's Exhibit 291, please, at page three. nd we could zoom into the collateral property.
Q Mr. McCarty, you would agree with me that plaintiff's -- actually, let me withdraw that.
Let's go back to the first page of Plaintiff's Exhibit 291. Do you recognize this document, Mr. McCarty?
I do, yes.
Q Is this a document that you reviewed?
I did, yes.
Q What is this document?
This is the credit report for credit approval of the Chicago -- two of the Chicago facilities.
Q Would you agree with me that this document summarizes Deutsche Bank's only analysis of this loan transaction?
Yes.
Q Okay.
THE COURT: Please keep your voice up.
Q Let's go back to the collateral section.

nd here it's a little more complicated, right, Mr. McCarty? There are two tranches to the loan transaction?
That's correct.
Q nd the first facility, facility , is a secured facility; correct?
That's correct.
Q nd the collateral that's pledged in connection with the secured facility is described here in this paragraph; correct?
That's correct.
Q It's a mortgage lien and a first priority security interest in the residential component defined as the residential component of the property consisting of but not limited to all -- excuse me -- all unsold , residential condominium units; B, deeded parking spaces; C, storage spaces; and D, associated common areas, including the borrower's fee, simple estate, all personal property, leases, rents, revenue, operating accounts, reserves and all other related assets." Do you agree with me?
Yes, that's what it says.
Q Okay. ll right. nd then facility will be cross collateralized with facility B with a subordinate lien on the collateral under facility B; however, only for the period of time that facility B remains outstanding; correct?
Correct.
Q nd I believe in your direct you testified that

facility B was retired early in the loan's history; correct?
Yes.
Q nd facility B, in much more summary fashion, you would agree had a collateral of a mortgage lien and first priority security interest in the commercial component of property; correct?
Correct.
Q nd all of the related property interests to that commercial component that are described in this credit memo; correct?
Correct.
Q nd you would agree with me that this describes accurately and fairly the collateral that was pledged in connection with the loan to 401 North Wabash; correct?
Correct.
Q I'd like to pull up Defendant's Exhibit 876 and I'd like to ask the witness if he can identify?
It's an amended and restated term loan agreement for North Wabash.
Q Did you review this document in connection with the preparation of your opinions in this case?
Yes, I believe I did.
MR. SU REZ: I'd like to move Defendant's Exhibit 876 into evidence.
THE COURT: Granted. It's in.

(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number 876 in evidence.)
MR. SU REZ: nd I'd like to pull up Plaintiff's Exhibit 1844 into evidence -- I'm sorry -- Plaintiff's Exhibit 1844 on the screen.
Q Mr. McCarty, can you please identify this document?
This is the amended and restated guaranty for Donald J. Trump in favor of Deutsche Bank Trust.
Q Did you review this document in connection with the preparation of your opinions in this case?
I believe I did.
MR. SU REZ: Your Honor, I'd like to move Plaintiff's Exhibit 1844 into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1844 in evidence.)
Q nd Mr. McCarty, in connection with the opinions you've given today, you reviewed and understood the economic terms contained in these documents; correct?
Yes, I focused on the economic terms. That's correct.
Q nd we can agree other than the collateral we just reviewed there was no other property that was pledged as collateral for this loan; correct?

That's correct.
Q nd Mr. McCarty, would you agree with me that the personal guaranty on this loan was extinguished by July 20, 2015?
I believe that's correct.
Q ll right.
MR. SU REZ: Let's pull up Plaintiff's Exhibit 294.
Q Mr. McCarty, do you recognize this document?
I do.
Q What is this document?
This is a similar credit report for credit approval of the North Wabash loans. I believe it's both the and the B loans.
Q Okay. nd you agree that this document reflects the bank's only analysis concerning the decision to make the loan -- I'm sorry -- Plaintiff's Exhibit 294.
I have that.
Q You have that? It's not on the screen. There we go. Would you agree with me that this document reflects the bank's only analysis in making the determination to enter into the loan transaction with Trump Old Post Office LLC as a whole?
I do.
Q nd have you reviewed this document prior to today?
Yes, I believe I did.
MR. SU REZ: Can we turn to page eight of this

document, please? Pull up the collateral.
Q nd Mr. McCarty, would you agree with me that the section reflected here, "Collateral," which describes the security and the facility as -- I'm sorry -- "the facility will be secured by (i) a first mortgage lien on borrower's leasehold interest in X, the property, and Y, all improvements thereto, two security interests in and to the extent assignable and as applicable, assignments of the borrower's interest in all permits, licenses, lease, contracts, agreements, operating accounts, receivables, etc. and (ii)" -- I'm sorry -- "(iii), borrower's interest in other customary, ancillary, collateral relating to the property."
Okay. Do you agree with me that that adequately describes the collateral for the Old Post Office loan transaction?
I thought we were on North Wabash.
Q No, 294 is the Old Post Office.
Okay, yes.
Q Yes you would agree with me that this adequately describes the collateral for the Old Post Office; correct?
Yes.
Q nd that no other property was pledged as collateral in connection with the Old Post Office loan by Deutsche Bank to the borrower Trump Old Post Office LLC; correct?
I believe that's true.

Q nd Mr. McCarty, can you please identify the document that I'm going to ask to be pulled up Plaintiff's Exhibit 1238? Turning to the next page.
It's the loan agreement for the Old Post Office project.
Q Did you review this document in connection with the preparation of your opinions?
Yes, I believe I did.
MR. SU REZ: Your Honor, I'd like to move Plaintiff's Exhibit 1238 into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1238 in evidence.)
MR. SU REZ: If we could please pull up D 1013.
Q Would you please, Mr. McCarty, identify this document?
That's the guaranty of Donald J. Trump, I assume for the Old Post Office.
Q nd is this a document that you reviewed in connection with the preparation of your opinions?
I believe it is, yes.
MR. SU REZ: Your Honor, I'd like to move D 1013 into evidence.
THE COURT: Granted. It's in.
(Whereupon, the item previously referred to is

received and marked Defendant's Exhibit Number D 1013 in evidence.)
Q ll right. Let's move to the Ladder Capital loan on 40 Wall Street.
MR. SU REZ: If we could please pull up D 552.
MR. W LL CE: Your Honor, I would just note that we're happy to stipulate to the entry of these documents. s Mr. Suarez noted, we are paying Mr. McCarty by the hour and so if we could cut down on the time we would certainly appreciate it. I don't know if he's asking the witness questions about these documents or just using them to enter them, but they're generally unobjectionable documents.
MR. SU REZ: lmost done with introducing the documents.
THE COURT: Okay.
MR. SU REZ: If you could turn to the second page. Following page.
Q Do you recognize this document, Mr. McCarty?
Yes, I believe it's the offering document for the 40 Wall Street offering by Ladder Capital.
Q Did you review this document in connection with the preparation of your expert opinions?
I believe I did, yes.
MR. SU REZ: Your Honor, I move this document into evidence.

THE COURT: Granted.
(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number D 552 in evidence.)
Q nd Mr. McCarty, would you agree with me that this document we moved to the section on the collateral? Describes the summary of the collateral for the 40 Wall Street loan?
Yes, I believe it does.
Q nd in general terms would you agree with me that the collateral for the 40 Wall Street loan was the building that sits on top of 40 Wall Street and the leasehold interests?
Yes, I believe it does.
Q nd with respect to the 40 Wall loan, you would agree that there is no other collateral that's pledged in connection with this loan; correct?
Other than the guaranty.
Q Well, is the guaranty -- withdrawn.
The collateral that's pledged as a security is the leasehold and the building; correct?
That's correct.
Q Okay. But there is no other property that's pledged as collateral; correct?
No other property, no.
Q No. There is no other property that secures the loan; correct?

That's correct.
Q nd the loan-to-value ratio for this loan you would compute by dividing the value of the property, the 40 Wall property, by the amount of the loan; correct?
That's correct.
Q nd in this instance, speaking of the guaranty, if we could go back to the section that describes the guaranty. We're going to blow that up.
You would agree with me that the guaranty that's at issue here isn't a full guaranty; correct?
That's correct.
Q It's not an unconditional guaranty; correct?
It is limited, yes.
Q Right. nd it's limited to certain carve outs relating to unleased space; correct?
That's correct.
MR. SU REZ: nd if we can blow up the section on the covenants. little further down on this page.
Q You would see here that the covenant that it describes is that the key principles must maintain a net worth equal to at least $160 million and a liquidity of at least $15 million?
That's correct.
Q nd the key principle described in this document is Donald John Trump?
That's correct.

Q Do you have any reason to believe during the life of this loan Mr. Trump didn't maintain a net worth equal to at least $160 million in liquidity of at least $15 million?
No, I don't think there was any violation of this covenant.
Q nd this document that we've been reviewing here, Mr. McCarty, you would agree with me reflects Ladder Capital's own analysis as to the loan transaction with 40 Wall Street LLC; correct?
The terms of the loan I think are described properly, yes.
Q nd it contains the analysis of Ladder Capital; correct?
Term sheets I don't normally say is an analysis, but I guess you could characterize it as analysis.
Q It's a document that's prepared by Ladder Capital; correct?
Right.
Q fter Ladder Capital has performed underwriting; correct?
Right.
Q nd it describes the features of the transaction; correct?
That's correct. I just -- the word "analysis" I don't know if there is any analysis in it.

Q nd if we could please pull Plaintiff's Exhibit 2973. I would ask Mr. McCarty to identify this document.
This is the loan agreement on 40 Wall Street.
Q nd did you review this document in connection with the preparation of your expert opinions in this case?
I did.
MR. SU REZ: Your Honor, I'd like to move Plaintiff's 2973 into evidence.
THE COURT: Granted.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 2973 in evidence.)
MR. SU REZ: nd I ask that Plaintiff's Exhibit 625 marked for identification be pulled up.
Q Mr. McCarty, did you review this document in connection with the preparation of your opinions in this case?
We're on 625 now?
Q 625.
Yes, I believe I did.
Q Can you identify this document, please?
This is the guaranty of recourse obligations for 40 Wall.
Q This is what we discussed earlier as a limited guaranty; correct?
Yes.

MR. SU REZ: I'd like to move Plaintiff's Exhibit 625 into evidence.
THE COURT: Granted.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 625 in evidence.)
MR. KISE: Judge, Your Honor, I have to step out as mentioned for that hearing that I noted last week. I just didn't want to walk out without letting -- thinking that I was pounding the table and leaving in protest.
THE COURT: We'll miss you.
Q Mr. McCarty, in preparing your opinions you had an opportunity to review the deposition that was taken in this case of David Williams from Deutsche Bank; correct?
That's correct.
Q nd is the analysis that you performed in support of the opinions you've given today reflect Mr. Williams' testimony that President Trump was in the top tier of verifiable net worth in this regional market?
I don't think it was a relevant issue for me.
Q You didn't think that was relevant to your analysis?
No.
Q So it's safe to say that your analysis doesn't account for that testimony; correct?
I think that's a misstatement. I said I didn't think

it was relevant.
Q So if you didn't think it was relevant did you fold it into your analysis?
Since it wasn't relevant I didn't need to fold it into my analysis.
Q Okay. So your analysis doesn't account for that testimony; correct?
It does because I believed it to be not material.
Q Okay. So Mr. Williams' testimony that President Trump was in the top tier of verifiable net worth in this regional market was not material to your analysis?
That's correct.
THE COURT: sked and answered three, four, five times.
Q Did you consider Mr. Williams' testimony that Deutsche Bank Private Wealth Management had a pricing grid that was in effect since at least 2010?
I'm very familiar with their pricing grid, yes.
Q Was that material to your analysis?
No.
Q Did you consider Mr. Williams' testimony that Deutsche Bank Private Wealth Management would use a pricing grid to determine appropriate interest rates to charge on private wealth management loans depending on the credit or collateral type?
No, I didn't think it was relevant.

Q Was that material to your analysis?
No.
Q Was Mr. Williams' testimony -- withdrawn.
Did you review the Deutsche Bank Private Wealth Management pricing grid in reaching your opinions in this case?
I did.
MR. SU REZ: Can we please pull up D 205, which was Exhibit 16 to Mr. Williams' deposition.
Q Do you recognize this document, Mr. McCarty?
I do.
Q Did you review this document in connection with preparing your opinions in this case?
I did.
MR. SU REZ: I'd like to move in Defendant's Exhibit 205.
THE COURT: Granted.
(Whereupon, the item previously referred to is received and marked Defendant's Exhibit Number D 205 in evidence.)
Q Mr. McCarty, you would agree with me that this is the Deutsche Bank pricing grid for the Private Wealth Management mericas group; correct?
For that group, yes.
Q nd it reflects here -- the first column reflects the geographic region; correct?

That's correct.
Q nd then the subsequent columns describe different type of loan products; correct?
That's correct.
Q nd that in the mericas group the commercial real estate column is the one that would have applied to the loans that are the subject of your opinions in this case and were made by Deutsche Bank?
For the actual interest rates, yes.
Q nd this reflects a pricing of LIBOR plus that spread; correct?
That's correct.
Q nd in reaching your opinions in this case did you consider Mr. Williams' testimony that Deutsche Bank Private Wealth Management would depart downward from this range if there was a competitive business case for doing so?
It's one of the standard bank issues in pricing this competition response, so yes, I believe it's correct for Private Wealth Management loans.
Q One issues that the bank can consider that wants to be competitive in the marketplace and in the loan is departing from this?
That's correct. They have some discretion to go lower.
THE COURT: Five-minute warning.
Q Did you consider -- was Mr. Williams' testimony

material to your analysis?
No, it was not.
Q Was Mr. Williams' testimony that Deutsche Bank Private Wealth Management would not depart upwards from this range material to your analysis?
No, it was not.
THE COURT: I think that's the same question. If he's -- if he says it was not material to his analysis -- we only have four more minutes of this.
Q Did you consider whether the pricing grid would allow for Deutsche Bank Private Wealth Management to charge a higher interest rate for a riskier type of collateral?
No, I don't think they could take a riskier position, so they couldn't change the rate.
Q Was Mr. Williams' testimony that he could not recall a single instance where Deutsche Bank Private Wealth Management charged a higher interest rate than what was provided in the pricing grid material to your analysis?
No, it wasn't.
Q Was Mr. Williams' testimony that even where the risk commensurate with the particular transaction warrants charging a higher rate he could not recall a single instance when Deutsche Bank Private Wealth Management had done that material to your analysis?
No, it wasn't.

Q In reaching your opinions in this case was it material to your analysis to consider whether Deutsche Bank Private Wealth Management would enter into these loan transactions regardless of whether the guarantor had a net worth of a billion, two billion or two and a half billion?
No.
Q That didn't factor into your analysis?
No.
Q Was it material to your analysis that Deutsche Bank's Private Wealth Management pricing grid would probably be unchanged even if the net worth of the sponsor was a billion dollars instead of two and a half billion?
No.
Q Did you consider material to your analysis Mr. Williams' testimony that Deutsche Bank's pricing would be unchanged even if President Trump's net worth was only a billion dollars?
I think there is one caveat there. You used just "Deutsche Bank." Did you mean "Deutsche Bank PWM?"
Q Thank you for correcting me. That's absolutely correct. The private wealth management pricing grid would be unchanged even if President Trump's net worth was only a billion dollars?
It wasn't relevant for me, no.
Q Okay. It wasn't material to your analysis?

No.
Q nd was it material to your analysis Mr. Williams' testimony that Deutsche Bank's Private Wealth Management pricing would probably be unchanged because a net worth of a billion dollars constitute a strong borrower or guarantor?
No.
Q That was not material to your analysis?
No.
MR. SU REZ: Your Honor, I'm at a good stopping point.
THE COURT: ll right, and we're at a good time to stop. So 2:15 everybody. Have a good lunch.
THE COURT OFFICER: Everybody remain seated while the witness steps out.
THE COURT: nd I'll direct the witness not to discuss this case, his testimony or anything related during the break until your testimony is finished this afternoon.
(Whereupon, there is a recess in the proceedings.)
Transcript continues on the following page....

F T E R N O O N S E S S I O N
* * * * *
THE COURT OFFICER: ll rise. Part 37 back in session. The Honorable Judge rthur Engoron presiding. Please be seated and come to order.
THE COURT: Welcome back, everyone. We are ready to continue with the cross-examination.
MR. SU REZ: Yes, Your Honor.
THE COURT: Let's get the witness.
THE COURT OFFICER: Court's ready for the witness?
THE COURT: Yes.
THE COURT OFFICER: Witness entering.
(Witness resumes the stand.)
THE COURT: I'll remind the witness that he's -- like I always do, that he's still under oath.
THE WITNESS: Okay.
THE COURT: nd let's proceed.
Q Mr. McCarty, you understood David Williams to be the senior lender and team leader within the Deutsche Bank Private Wealth Management Group?
s the lender, yes.
Q I'm sorry?
s the lender, yes.
Q Did you discuss the subject matter of your testimony with anyone during the lunch break?

Nope. I just had a solo salad.
Q Now, Mr. McCarty, in reaching your opinions you've given today in court, you didn't consider the deposition testimony of Tom Sullivan, correct?
No. I mistakenly in our deposition didn't recall reviewing Sullivan, but I had. I just didn't recall the name when we did it, but I didn't use his deposition in my opinion today.
Q So you did read it?
I did it read ultimately. I didn't use it in my opinion today.
Q Because earlier today I had asked if you read anything additional since your deposition. You told me you hadn't.
I had read it before my deposition. I just didn't recall it in my deposition that I read it.
Q You didn't remember reading the deposition of Tom Sullivan?
That's right.
Q That's right?
That's right in my deposition.
Q It wasn't listed as a document that you relied upon in your report, correct?
Not relied on. I reviewed it. The listing I had was just of the documents that I relied on.
Q If we pull up Exhibit B to your report, you listed all

of the documents that you relied on.
That's correct.
Q nd this one wasn't listed?
No.
Q But you did list the deposition of David Williams, correct?
David Williams and Haigh, I believe, were the two key ones I looked at.
Q Okay. Now, do you understand Tom Sullivan was the head of structured lending at Deutsche Bank during the time it made the three loans at issue in your testimony?
Yes, I do.
Q nd I understand you don't recall having or at the time of your deposition you didn't recall having read his testimony, but now you do, but would it be the case that it was material to your analysis -- let me withdraw that.
Was it material to your analysis that Mr. Sullivan testified that Deutsche Bank was not mislead in any aspect of any credit decision it made based on information that was included in President Trump's Statement of Financial Condition?
No.
MR. ROBERT: Objection.
THE COURT: He answered it. What's the objection unless you want to withdraw the objection?
MR. ROBERT: I don't want to withdraw the

objection. I believe that misstates Mr. Sullivan's testimony, but the witness was able to answer.
Q Was it material to your analysis that Mr. Sullivan testified at his deposition that Deutsche Bank was not mislead because Deutsche Bank developed its own independent view concerning President Trump's financial condition?
No, I don't think it is material to my analysis.
Q nd was it material to your analysis that Mr. Sullivan testified that Deutsche Bank's decision making was based on what Deutsche Bank was comfortable with as a result of the assessment that it independently performed rob?
MR. W LL CE: I'm happy to make a standing objection to the characterization of Mr. Sullivan, but the questions, I'm fine with them. I just want to note our standing objection.
THE COURT: Okay. Noted.
No, it is not material.
Q Not material. nd is it material to your analysis that Mr. Sullivan testified that he would have likely recommended a credit facility sponsored by President Trump even if he was only worth a billion dollars?
No, I don't think it is material.
Q nd do you think it is material to your analysis that Mr. Sullivan testified that this was because a $1 billion net worth is still significant wealth?

No. I'm aware of the testimony. I don't think it's material to my analysis.
Q It is not material to your analysis?
No.
Q Was it material to your analysis that such a determination according to Mr. Sullivan's testimony would be based on what the net worth looked like based on asset allocation, quality of the assets and assuming asset allocation, a $1 billion net worth would be sufficient?
No, I don't think it is material.
Q You don't think it is material?
THE COURT: Please don't keep repeating the answer unless you think he can't be heard.
MR. SU REZ: I'm having a little trouble hearing it. That's why I'm doing it, but I understand.
Q re you aware that Mr. Sullivan testified at his deposition in this case that he would recommend the Doral credit facility based on the project strength alone?
No, I don't think it's material.
Q That was not material to your analysis in this case?
THE COURT: That's what I just asked you not to do and you said you wouldn't do it.
MR. SU REZ: I'll try. re you aware -- let me withdraw that.
Q Was it material to your analysis in this case that Mr.

Sullivan testified that he was not aware of any misrepresentation with respect to any asset provided by the guarantor?
No.
Q Did the NY G ask you not to review the Sullivan deposition?
No.
Q Was there -- withdrawn.
Can we agree that regardless of how the loans were procured from Deutsche Bank, the guaranty was still in place for a period of time?
Yes.
Q nd if there was an extreme situation that impacted the cash flow of any of the particular borrowers, the guarantor could have been responsible?
Yes, probably.
Q Let's go up to your demonstrative from earlier today. Going back to the CRE interest rate of ten percent, isn't it the case that that's a number that you used because the New York ttorney General provided to you documents relating to a proposed transaction from CRE at that interest rate?
No. It originally started from the credit reports where I looked at BB rating that it assigned to the collateral and the BB rating to me had a market movement somewhere between nine and ten percent.

MR. SU REZ: Your Honor, I move to strike that as not responsive. I was asking if the documents were provided by the NY G.
THE COURT: It is -- all right. Were the documents provided by the NY G?
Q Were the documents provided by the NY G from which you determined that the CRE had offered an interest rate of ten percent?
I received documents produced from Deutsche Bank through New York -- the G that showed the terms and conditions of all three of the loans.
Q Okay. The terms and conditions of all three -- of the offers from the CRE Group, correct?
That's correct.
Q Those were documents that were provided to you by the NY G, correct?
The confusion I had on your question is that wasn't the primary basis of my decision to use the numbers.
Q That's not what I'm asking you. Those were documents that were provided to you by the NY G, right?
The numbers are not necessarily the documents.
Q Sorry?
No.
THE COURT: The numbers are not documents.
Q The documents that you reviewed in order to get those

numbers came from offers that the CRE Group made that were provided to you by the NY G?
Only as a portion. I said the other portion was the credit report, my own analysis of comparable transactions and the knowledge of the rated companies.
Q Correct, but you knew that those CRE numbers existed because they were provided to you in documents by the NY G?
fter I had started the analysis that I described, yes.
Q Okay. Those documents weren't in your possession until they were provided to you?
That's correct.
Q Okay.
THE COURT: Mr. McCarty, a little closer to the microphone and a little louder.
THE WITNESS: Will do. Thank you.
Q So with respect to the CRE proposal that was not accepted on the Doral transaction, would you agree with me that that proposal could have been further negotiated?
I'm not aware of whether it was final or not, so I don't have an opinion whether it was negotiated or there may have been negotiations. I'm not aware of.
Q It was never a final proposal, correct?
I don't know that that's true.
Q Well, you reviewed the documents, didn't you?
I did. It had a signature block on it for the ones I

saw, so that, to me, usually indicates it is a fairly final document.
Q But you're not certain if that was a final offer from the CRE Group?
Not either way, no.
Q So you're not certain if the CRE Group would have extended credit on those terms, correct?
Based on my experience of banks, I think the projection of a multi-page term sheet with details and a signature block indicates that they would have provided credit under those terms.
Q So your testimony is that based on your review of those documents, you are certain that the CRE Group would have provided a loan on those terms?
I don't think that's what I said.
Q So are you certain sitting here today that the CRE Group would have provided a loan on those terms?
I don't have an opinion. I believe that those are serious, could be final documents.
Q I'm asking if you are certain. Either you're certain or you're not certain.
I can't really give you a judgment about it.
Q You don't know whether you're certain or not that CRE Group would have provided a loan on those terms?
I think my testimony was that I think they would have.

Q Okay. So you can't be certain? You think?
I think --
Q It is a supposition, correct?
Based on experience.
Q You can base it on whatever you want, but it is still a supposition, right?
I guess so.
Q "I guess so" means yes?
I'm uncertain.
Q You're not certain. So that, you are not certain about?
I'm uncertain about your question.
Q re you certain whether the CRE Group would have provided financing on those terms?
I believe my best judgment is that they would have provided financing on those terms.
Q Your opinion is is that they would have?
My best judgment based on experience.
Q Is it not your opinion that they would have?
No.
Q Okay. So, then, you're not certain if they would have produced -- if they would have done that loan on those terms?
No. My best judgment is they would have.
Q Okay. But you can't be certain?
THE COURT: Oh, come on. Enough is enough. How

many times does he have to say he can't be certain. He's not certain.
MR. SU REZ: He says it is his opinion, maybe it is maybe, it isn't.
THE COURT: He said it is his best judgment, but he refused to say, "Yes, I was certain."
MR. SU REZ: " re you certain" is a yes-or-no question. I'm certain it is Wednesday.
THE COURT: I wish he had answered yes or no. I think he could have but he's not going to. So let's move on.
MR. SU REZ: So would Your Honor agree with me that the response was not responsive?
THE COURT: Yes. So let's ask him.
It is a yes-or-no question. re you certain that they would or not have, whatever, offered a loan on those terms? re you certain?
THE WITNESS: It is a hypothetical question. I can't be certain.
THE COURT: I'll take that to mean no, he's not certain because he said "I can't be certain."
Q Your analysis here doesn't consider whether the borrower could have obtained another source of financing, correct?
No, we decided that the only way we could look at it

was to do it on a static basis, no refinancing, no increase in terms to keep the situation static from the original start.
Q gain, it is a yes-or-no question. It either considers it or it doesn't.
THE COURT: Can you read back the question and the response.
(Whereupon, the requested portion of the record was read back.)
THE COURT: Stricken.
Please answer yes or no. If you need the question asked again or read back, we can do that.
MR. SU REZ: Yes, please. Please read back my question.
THE COURT: One more readback, just the question.
(Whereupon, the requested portion of the record was read back.)
THE COURT: Hold on. Objection by the judge. It is a negative question. Just ask it in a positive way.
Q Does your analysis here consider whether the borrower could have obtained another source of financing?
No, it does not.
Q Does your analysis here consider whether the sponsor could have borrowed money against another asset?
No, it does not.
Q Does yours analysis consider whether the borrower could

have pledged another asset as collateral?
No.
Q Does your analysis consider whether the borrower or sponsor could have just not done the deal?
No.
Q But you would agree with me, Mr. McCarty, that the collateral in your hypothetical analysis here for the CRE rate is the same collateral as that for the actual loan that was made, correct?
bsent the guaranty, it is the same collateral.
Q So the only difference in your analysis is whether the guaranty is there or not, correct?
Correct.
Q nd I have the same question for the OPO loan. Does your analysis consider whether the borrower could have obtained another source of financing?
No.
Q Does your analysis consider whether the sponsor could have borrowed against another asset?
No.
Q Does your analysis consider whether the sponsor could have pledged another asset as collateral?
No.
Q Does your analysis consider whether or not the sponsor could have chosen not to do the deal?

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No.
Q nd you would agree with me, Mr. McCarty, that the only difference in your analysis between the actual interest charged and the CRE interest that you've included in this calculation is the existence of the guaranty, correct?
That's correct.
Q It is -- it -- your analysis is based on the exact same collateral, correct?
I need to clarify the question. You're asking if that's the only difference between the two lines?
Q Let me ask it differently. Is the difference between the assumption that you made -- withdrawn.
The analysis for the interest rate that you provided at eight percent, that contemplates the same collateral, correct?
Correct.
Q nd with respect to the Chicago loan, the analysis that you've provided with the CRE interest rate at seven and-a-half percent, that contemplates the same collateral as the actual transaction, correct?
That's correct.
Q nd with the 40 Wall loan in the bottom, the same thing, the same question, it contemplates the use of the same collateral, correct?
Correct.
Q With respect to the Doral loan, your opinion doesn't

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consider whether the sponsor of the transaction could have gone to hundreds, if not thousands, of other lenders, correct?
No, it only -- the only consideration I have made was that there was an alternative offer from Beal, so there was another alternative.
Q So it doesn't include that consideration?
It included the consideration of Beal, yes.
Q But not the fact that he could have gone to hundreds, if not thousands, of other borrowers?
I had no knowledge that there was available other than Beal.
Q nd your knowledge as to what was available came from the documents that were provided to you from the -- by the New York ttorney General, correct?
Everything was provided by the ttorney General, but the Beal reference I don't think was the same documentation.
Q But it was provided to you by the New York ttorney General?
s part of production, yes.
Q Would it be fair to say that your analysis only contemplates the alternatives that were provided by -- excuse me.
Would it be fair to say that your analysis only contemplates alternatives that were reflected in documents that were provided to you by the New York ttorney General?

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No, I'd say it also includes my judgment about credits and pricing of credits in the market.
Q Is it the case that the sponsor in any of these transactions could have gone out and solicited additional financing from many other different types of lenders?
gain, I'm not sure it was a broad spectrum of available credits for these properties at the time.
Q My question was a little different. Isn't it the case that the sponsor could have gone out and solicited from hundreds, if not thousands, of other lenders loans on these transactions?
My answer was I'm not sure that that type of market exited.
Q But I wasn't asking you whether you thought the market existed. I was asking you whether you thought the lender -- sorry -- the sponsor could go out and solicit lending from hundreds, if not thousands, of other lending institutions?
If he wanted to, sure.
Q Okay. nd that fact is not contemplated in your analysis?
No.
Q ll of the different other financing alternatives that were available to the sponsor of each of these individual transactions are not contemplated by your analysis?
THE COURT: It is a negative question and it has

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been asked and answered.
MR. SU REZ: ll right. I'll withdraw it.
Q Now, let's talk specifically about the three Deutsche Bank transactions.
Does your analysis contemplate President Trump's obligation to maintain deposits, assets under management at Deutsche Bank?
No, it doesn't contemplate the $20 million deposit.
Q nd isn't the case that at a certain point in time, President Trump and entities related to him had over $100 million on deposit in Deutsche Bank?
I'm not aware of that fact.
Q It is in the credit memos.
No, I don't recall it.
Q Isn't that part of the reason why private wealth management goes and seeks out high net worth individuals?
In my experience in wealth management, it is not a major item. Deposits are worth very little.
Q But you agree with me that you have never worked at a private wealth management group?
I've only managed them.
Q The calculations that you have here for the Doral loan don't factor the cost of maintaining those deposits at Deutsche Bank, correct?
No. We decided to exclude them and the fees associated

with the other loans, so we thought they canceled each other out.
Q So there is no credit given for the additional requirements that President Trump had to meet in order to qualify for the private wealth group, correct?
It does because we canceled out the fees for the CRE loans to be equal.
Q But the wealth management loans had fees, didn't they?
They were smaller.
Q The Private Wealth Group, however, has a different business model than the CRE Group, correct?
That's correct.
Q nd the CRE Group doesn't have the same requirements that you maintain assets under management, correct?
No, they have different requirements.
Q But that wasn't my question. My question was whether the CRE Group had the same requirement that you maintain assets under management?
No, they didn't.
Q That's an additional benefit to the bank, right?
It is one of the benefits, yes.
Q nd the other benefit is the opportunity to cross-sell, right?
That's available with any customer, yes.
Q But it is a benefit to the bank, right?

In any division, yes.
Q Excuse me?
In any division of the bank, it is available.
Q Do you consider that to be a an emphasis of the Private Wealth Group?
I think it is an emphasis on every banking group.
Q You don't think that's anything specific to the Private Wealth Group?
Not necessarily, no.
Q The ability to develop relationships with ultra high net worth individuals, is that an objective of the Private Wealth Group?
It is, yes.
Q nd was it the case that they were able to do that with President Trump as a client?
I don't know the specifics. They did multiple loans, yes.
Q nd are you aware that the co-chairman of the bank expressed an interest in developing a relationship with President Trump and his companies?
Yes, I read that.
Q nd that Deutsche Bank sought President Trump's business?
Yes.
Q nd that Deutsche Bank wanted to have President Trump's

business in the Private Wealth Group?
They marketed to him and I suspect that's true.
Q They marketed to him, correct?
Yes.
Q He is the type of person that a Private Wealth Group would market to?
Yes.
Q Now, in your analysis of the 40 Wall Street loan, does that take into account the $6 million swap break fee that the borrower had to pay to do the transaction?
It was in the case that we assumed that it was in both. Since we're continuing the Capital One, we considered it not relevant.
Q So, part of the 40 Wall analysis is just an assumption that the Capital One loan would have stayed in place correct?
Correct, would have rolled over.
Q nd it is your testimony that if the Capital One loan would have stayed in place, the borrower would still have had to pay the $6 million swap fee?
No, we don't believe so. We considered it be a rollover on the same terms.
Q It would roll over on the same terms?
Right.
Q So there was a cost to doing the transaction with Ladder Capital, correct?

There was a cost to Ladder Capital, yes.
Q But the $6 million swap breakage fee was paid for by the borrower?
Yes.
Q Okay. That was a cost of doing that transaction, correct?
Yes.
Q So that cost would not have existed if they stayed with Capital One bank, correct?
That's correct.
THE COURT: Move a little closer to the mic, please, or bend the mic more towards you.
MR. SU REZ: May I have a second to confer with my colleagues?
THE COURT: Sure.
(Whereupon, there was a pause in the proceedings.)

Q ll right. I think at some point somebody described this as an exercise; correct?
Not totally simple math, but it's an exercise in mathematics.
Q It's an exercise in mathematics. I'd like to ask you to engage in an exercise in mathematics.
Okay.
Q If you take the Doral transaction and we agree that the guaranty went down to ten percent in the middle 2015; correct?
Yes.
Q nd if we take out all of the interest delta after the middle of 2015, this grand total here goes down to about $63 million; correct? Goes down by $63 million?
I haven't done math, so I don't know.
Q Well, if you take 4.7 million and half of 10.08 million, that leaves you with about 9.5 million?
In order to do that you would have to make an assumption that I didn't make which is you have to say it would be refinanced.
Q I'm asking to you do just the math with me. Walk me through the math here, okay? It's just a math exercise.
Okay.
Q ll right. Can we do a math exercise?
Sure.
Q nd understand that I'm a lawyer and the typical

disclaimer we're not good at math, so I won't be offended if you correct me, but if you take all of the interest delta from the middle of 2015 and take it out from the date, approximately ballpark, we're not being very precise here, but if you ballpark the interest delta from the middle of 2015 and you subtract that from the grand total, that leaves you with about nine million dollars in interest delta; correct?
Nine million and change.
Q Nine million and change.
nd if we go down to Chicago and you subtract the interest delta from when the guarantee was extinguished in the middle of 2015, the $17 million number goes down to about 1.7?
It's about right.
Q nd if you take the 40 Wall Street loan and you back out the 60 -- I'm sorry -- the $6 million swap fee that they had to pay in order to do the 40 Wall Street loan with Ladder Capital, that number goes down to 18.2 million; right?
Correct.
Q nd you would agree with me in rough numbers that if you back that out of your analysis you get 18.2, plus 1.7, plus 53.4, plus 99.5, that number would only be 82.8 million?
It's about right.
Q That's about right?
MR. SU REZ: Your Honor, I have no further questions on cross examination.

THE COURT: ny redirect?
MR. W LL CE: Was there other cross from any other defendant?
MR. ROBERT: No, thank you.
MR. W LL CE: No redirect, Your Honor.
THE COURT: Okay. I'll let the witness go.
Thank you.
(Whereupon, the witness is excused from the witness stand.)
MS. F HERTY: On behalf of the People again, we call Donald Trump, Jr. to the stand for our next witness.
THE COURT: Let's get the witness.
nd Ms. Faherty, you're not coming through that loud. Maybe move it up.
I believe we have some photographers that have interest in this situation? Let them come in.
MS. F HERTY: I was not forewarned and my hair is a mess.
THE COURT: I was forewarned and my hair is still a mess.
MS. F HERTY: I like your hair better, Judge.
THE COURT: I'll ask the witness to take the stand.
(Whereupon, the witness enters the courtroom and approaches the witness stand.)
THE COURT OFFICER: Please raise your right hand.

Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?
D O N L D T R U M P J R., called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:
THE WITNESS: I do.
THE COURT OFFICER: Please have a seat.
Please state your name and either home or business address on the record.
THE WITNESS: Donald Trump, Jr., 725 Fifth venue, New York, New York 10022.
THE COURT: Voice sounds good, but get a little closer to the mic. It's very temperamental.
nd let's proceed with the questioning.
DIRECT EX MIN TION
BY MS. F HERTY:
Q Good afternoon, Mr. Trump.
fternoon. How are you.
Q Good, thank you. Nice to see you again.
Mr. Trump, are you taking any medication or drugs of any kind that might make it difficult for you to understand and answer my questions today truthfully and accurately?
No.
Q re you suffering from any conditions that would make

it difficult for you to understand my questions and answer questions today truthfully and accurately?
No.
Q Just a few brief questions about your educational background and work history.
First, did you attend college?
I did.
Q Did you earn a degree?
I did.
Q From where did you earn a degree from the college institution you attended?
The University of Pennsylvania.
Q Is it the Wharton School of Business that you attended?
Yes, as a division of the business school of, yes.
Q nd what degree did you receive from the University of Pennsylvania?
Bachelor of science.
Q In what concentrations, if any?
Real estate finance and marketing.
Q nd in what year did you earn that degree, Mr. Trump?
2000.
Q ny sub majors?
I guess the real estate finance and marketing are sort of all the sub majors that are, you know, part of the bachelor of science.

Q Okay. How about professional certifications or licenses?
I'm a real estate broker.
Q nd when did you receive that real estate broker's -- sorry -- withdrawn.
Do you have a license to be a real estate broker?
Yes.
Q Okay. nd when did you receive that real estate broker's license?
I don't recall.
Q Refresh your recollection that it was about the mid 2000s?
That seems about right. That probably was my salesperson license and then took it further after that, but yes, that's probably about right.
Q So you have a real estate broker's license and there are degrees contained within that license; yes?
Correct.
Q nd is there a brokerage firm that sponsors your real estate broker's license?
Trump International Realty.
Q What is Trump International Realty?
Let's call it the brokerage arm of the Trump Organization.
Q nd are you employed at Trump International Realty?

Not specifically, no.
Q re you one of the executive officers that oversees Trump International Realty?
I believe I am.
Q Okay. re you familiar with anyone else who is an executive that oversees Trump International Realty?
Likely my brother Eric.
Q nyone else?
Not off the top of my head.
Q t any point in time did your sister Ivanka Trump also serve as an executive officer that oversaw Trump International Realty?
I believe she would have, yes.
Q Did the three of you Eric, Ivanka and you serve as the initial executive officers that established the Trump International Realty brokerage arm of the Trump Organization?
That would make sense, but I don't recall.
Q Okay. ny other licenses or certifications that you have not told me about?
Not off the top of my head.
Q re you familiar with an acronym G P or G P?
I'm familiar with it, yes.
Q What -- how are you familiar what that acronym G P?
Well, I understand what it stands for.
Q What does it stand for?

Generally accepted accounting principles.
Q nd how did you become familiar with what the acronym G P stands for?
I believe that was an accounting 101 back in the late 90s.
Q t Wharton?
Yes.
Q nything else that you're familiar with with regards to the acronym G P or what it stands for?
No, that's what I have CP s for.
Q Okay. Have you ever been employed in the position that required you to apply G P to your work?
Not to my knowledge.
Q nd correct you're not a certified public accountant; right?
That is correct.
Q nd you don't hold any professional certifications in accounting; right?
Not even a little bit.
Q nd fair to say you're not a member of the merican Institute of CP s or similar types societies; right?
Sounds very exciting, but no.
Q Those certifications aside, have you received any professional training in applying G P in the course of your work?

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I have not, no.
Q Okay. So I'm going to ask a series of questions related to G P. I'm sure we'll move through quickly, but I just want to just confirm some of your knowledge with regards to G P.
Is it fair to say based on your testimony that you're not familiar with how revenue is recognized in accordance with G P?
MR. ROBERT: Objection. The witness has already testified he's not familiar with G P. Now asking more questions about what he knows about G P is going to get us nowhere.
THE WITNESS: Yes, I know nothing about G P in terms of that capacity and I'll leave it to my accountants. That's why we have Big 5 CP firms to do all of that.
Q So any further probing questions I would ask you about G P and how G P would be applied your answer would consistently be "I have no such knowledge?"
That's correct.
Q Thank you.
re you familiar with the Financial ccounting Standards Board or F SB otherwise referred to as F SB?
Not to my recollection, no.
Q No specification understanding as to its function or its work?

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No.
Q How about the accounting standards codification? ny understandings -- any understanding as to the accounting standards codification and sub rules contained within?
No.
Q So if I asked you about any of the N SC rules you would not have any specific knowledge as to those rules?
That's correct.
Q Similarly, if I asked you a question about the SC rules as they applied to statements of financial condition or compilation work, no specific understanding as to those rules or the application to statements of financial condition?
Correct.
THE COURT: Those are negative questions. You can ask him if he does, not --
MS. F HERTY: I promised I wasn't going to do it, Judge.
THE COURT: It's a tough habit to break.
MS. F HERTY: It is.
THE COURT: Just ask Mr. Suarez.
Q Fair to say you don't have that understanding?
No.
Q Thank you.
THE COURT: I think that was just a negative question. "Fair to say you don't have that understanding?"

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You should ask him "do that you have that understanding."
THE WITNESS: I have no understanding. Simplify it.
MR. ROBERT: That was about G P he meant.
Q I'll take the answer.
Is it fair to infer that any work, if any, that you did on the Statement of Financial Condition you are not applying the FCs or any rules included in the F S?
THE COURT: That's a negative question.
Q You didn't apply any work --
MS. H BB : Excuse me. I'm going to object to that. We've already run through that. He said he doesn't have qualifications. We've asked and answered this so now you're asking him something about a statement of financials and applying FC rules. This will take a lot longer if we keep doing it.
THE WITNESS: I -- that's what you do in business. If you don't have that understanding, I rely on the professionals and CP s that we paid millions of dollars that have that degree and probably have a great degree of understanding and I rely on their opinions and their assessments to make those decisions.
MS. F HERTY: Move to strike, Your Honor.
THE COURT: Well, the last part, yes, but I've sustained the objection. It will be a lot simpler if he

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says he doesn't understand some standards, not to ask him about the standards.
MS. F HERTY: No problem, Your Honor. Thank you.
THE COURT: Sure.
Q Mr. Trump, who is your current employer?
I believe it's still Trump Payroll Corp.
Q Do you work for an umbrella organization known as the Trump Organization?
Generally speaking.
Q You just made a reference to Trump Payroll Corp. Who is Trump Payroll Corp?
n entity designed to pay the employees of the Trump Organization.
Q nd what is Trump Payroll Corp's business other than paying employees of the Trump Organization?
That's the extent of it. So you can again talk to the lawyers and the accountants who structured those things that way for corporate structure purposes.
Q nd you just made reference to employees of the Trump Organization. What is the Trump Organization?
Generally speaking it's a -- let's call it an umbrella term for the entities under the purview of our family's business.
Q So if I make a reference to the Trump Organization and work you've performed for the Trump Organization do you have an

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understanding as to the business I'm referring to when I use the term "the Trump Organization?"
Generally speaking, yes.
Q Okay. When did you start working for the Trump Organization?
Shortly after September 11th, 2001. So I think it was the 17th, right after 9/11.
Q Was that after a gap year from college?
That was.
Q nd when you first began working for the Trump Organization, what was your title?
I worked as a project manager on West Side Yards project, so it wasn't even for the Trump Organization. It was for Hudson Waterfront LLC or one of the derivatives of that.
Q There is a derivative entity known --
I think it's Hudson Waterfront ssociates perhaps.
Q Hudson Waterfront ssociates.
Is that still affiliated with the Trump Organization?
It's been awhile. I'm not sure.
Q ny reason to doubt that it is an entity affiliated with the Trump Organization?
Well, the assets were sold, so perhaps they are gone. I don't know.
Q t the time on which you were working on that project was it affiliated with the Trump Organization?

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Yes.
Q nd through your work on the west side Yards project is it correct that you became familiar with Vornado Realty Trust?
Yes.
Q nd you became familiar with the partnership arrangement between Vornado and the Trump Organization; correct?
Really didn't have anything to do with what I was doing at the time, but I generally knew of it. I was a low level guy learning how to build ground-up construction, so I didn't really deal with those entities, but generally speaking, yes.
Q nd generally you're familiarity with that partnership, with Vornado, is that the Trump Organization or the umbrella Trump Organization maintains a 1/3 partnership relationship with Vornado; yes?
Yes.
Q fter the Hudson West Side Yards project, is it correct that you then still were working as a project manager you handled construction and development at Trump Park venue?
Yes.
Q Is that a prewar building?
Yes.
Q nd what specifically did you do as project manager at Trump Park venue?
Little bit of everything; design construction, overseeing some of the banking relationships we had, anything

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and everything.
Q nd correct that there are certain units contained at Trump Park venue that are rent stabilized, yes?
Hotel stabilized, but yes.
Q nd you're familiar with rent stabilized laws here in New York City; correct?
I was then. I've probably forgotten most of it now.
Q Fair to say at the time you had that knowledge about the rent stabilization laws that impacted development at Trump Park venue; correct?
Yes.
Q nd the limitations imposed by those laws; correct?
Correct.
Q Subsequent to the Trump Park venue project is it correct you then eventually worked at the Trump International Realty Hotel in Chicago; right?
Yes.
Q gain, as a project manager still?
I don't recall my specific title, but probably, yes.
Q nd what exactly were your duties at the Trump International Realty Hotel in Chicago?
Well, when I got involved it was still the Chicago Sun Times building. We had a partnership with them and we were going to build the tallest residential building in Chicago there. So everything from design, architecture, sales, and

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marketing, finance, construction. You name it.
Q nd do you recall the time period that you were working on that particular project?
Early 2000s. It was quite a bit of time, but probably three, four years I spent three days a week there for three, four years.
Q nd then subsequent to your time working on the Chicago project, fair to say you had a change in title in your work for the Trump Organization?
I may have. I don't specifically recall when that happened, but yes. I was progressing.
Q What do you recall your next title was at the Trump Organization after you progressed from being a project manager?
I don't recall.
Q Fair to say you eventually became an EVP or executive vice president at the Trump Organization?
Eventually, yes.
Q How many other titles have you held in the course of your tenure with the Trump Organization?
I'm not sure.
Q More than five?
Probably not, no.
Q Less than five then?
Yes, but I don't know specifically.
Q Have you at any point become an executive vice

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president at the Trump Organization?
Yes.
Q So we've got project manager; yes?
Yes.
Q Executive vice president; correct?
Correct.
Q What other titles as you sit here today did -- can you think of that you've had in the time that you've worked for the Trump Organization?
I imagine I was a VP somewhere along the way and I'm not exactly sure.
Q nd at what point in time do you think you were just a VP, not an executive VP?
I can't recall.
Q Before 2011?
I would imagine so, yes.
Q Fair to say beginning at least from 2011 you have served as an executive vice president for the Trump Organization; yes?
On or about, yes.
Q nd considering the hierarchy of executive titles within the Trump Organization where does an executive vice president fit within such hierarchy?
Fairly high.
Q Who is above you in your role as an executive vice

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president at the Trump Organization?
MR. ROBERT: Time period?
MS. F HERTY: I think we've got from 2011 forward he has served as an executive vice president, so the question was related to in his time as an executive vice president who was above him.
MR. ROBERT: t what point in time? You're talking about a decade.
MS. F HERTY: I can narrow it down. I can ask the question.
THE COURT: Or you can keep it broad. Was anyone ever among you?
THE WITNESS: Obviously, I would have reported to my father during that period of time. I imagine, you know, in the early transition to that title I would have still been, you know, people like an llen Weisselberg still would have been senior to me. Those would have been the primary.
Q When was the time period when llen Weisselberg was senior to you?
Well, certainly initially in that time frame and, you know, as other projects and especially as we started expanding more abroad and outside of New York City obviously I was going to be on the road a lot of that time. So the seniority started let's call it equalling up, then I guess that would have been mid teens, mid, early teens.

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Q So around 2013?
Perhaps off the top of my head, yes.
Q So from the period of 2011 to 2013, what, if any, decisions did you need to report in to llen Weisselberg for his approval?
There is not a specific list.
Q Did llen Weisselberg have authority over your work at the Trump Organization between the time period of 2011 to 2013?
I would say yes on some things and other things I'd have total autonomy to do what I wanted.
Q Describe for me the specific things you were thinking about with that testimony that llen Weisselberg had an authority over you between 2011 to 2013?
Well, I wouldn't have done a refinance without, you know, the involvement of our CFO obviously. Those are the kinds of things. If I was making a construction decision or even a deal decision to do a -- say, a licensing deal abroad, I had the autonomy to do that. gain, there is not sort of a defined list of where you would or would not go, but there are definitely things I would bring to him because I was naturally his wheelhouse.
Q In 2011 to 2013, which refinancing deals did llen Weisselberg supervise you on?
I don't recall.
Q No specific recollection as you sit here today?

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I'm just using refinance deals as an example of something I would bring. I'm not talking about a specific one, so if you have specific ones you can ask them, I can give you the answer.
Q I'm asking your specific knowledge as you sit here today.
I don't specifically recall in that time frame which ones we refi'd or didn't.
Q ny other areas of supervision between 2011 to 2013 for which you reported to llen Weisselberg for his supervision?
Not that I recall.
Q I believe you also said your father during this period. What is the period to which you are referring to between 2011 forward for which your father Donald J. Trump was a supervisor who had authority over the work you performed at the Trump Organization?
Until he assumed the presidency.
Q When was that?
January of 2017.
Q nd how about your siblings? Between 2011 to present -- let's do 2011 to 2017. What, if any, authority did Eric Trump have over your work between 2011 to 2017?
We were on a similar plane, so we had our own silos and we tried to stick to that. nd if someone would be better at a certain thing or had a more institutional knowledge he would

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bring them in, but we had our own silos.
Q So in the hierarchy would you say that you were equal footing with Eric between 2011 and 2017?
Yes.
Q How about Ivanka between 2011 and 2017?
Same.
Q nd fair to say your father was above the three of you during that time period, 2011 to 2017?
Yes.
Q Was llen Weisselberg similarly over Ivanka and Eric between 2011 and 2013 that you testified to just a few moments ago?
I don't know the exact dates, but that would make sense. s they matured and as they figured out more, those levels blended together a lot more.
Q nd in 2017, how, if at all, did the hierarchy above you serving continuing sales in EVP change?
We stopped reporting to my father on decisions involving the business.
Q So who at that point in January 2017 was in charge of the Trump Organization?
It would have been a combination of myself, llen Weisselberg and my brother.
Q nyone else?
No.

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Q nd was there a change in title in January 2017 to reflect that supervisory change?
Not that I remember, no.
Q Okay. Focusing on your time as an EVP.
You've spoken about some of them, but let's dig in a little bit more.
What were your general responsibilities serving as an executive vice president at the Trump Organization?
It's an all-encompassing developmental role for me. Specifically, I focused a lot on our international business, a lot on our hotel company and development of new licensing deals and such, but you could have done anything at any given day.
Q Fair to say you handled acquisitions?
Yes.
Q You worked on development projects; yes?
Yes.
Q You worked on the operation side of the business?
Correct.
Q I heard you just say you worked on financing; correct?
t times, yes.
Q nd you've worked on the leasing side of the business; yes?
Yes.
Q You've worked on the branding side of the business; correct?

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Yes.
Q nd that was generally the types of responsibilities you had between this time period 2011 through 2017?
Correct.
Q Is that still current today?
Yes.
Q Focusing after January of 2017, you've said you did not have a title change, but the responsibilities changed insofar as you did not have to report in to anyone above you; correct?
Correct. I became a trustee of the trust. My title stayed the same, but I functioned as a trustee as well.
Q Since January 2017, who has the ultimate authority over decisions made at the Trump Organization?
Then it would have been again llen Weisselberg, myself and my brother.
Q nd by your brother, you're referencing Eric, not Barron; correct?
Correct.
Q Does llen Weisselberg still retain that same authority that it transitioned to in January 2017?
No, he does not.
Q Why did that change?
Because some legal issues he got himself into, so that switched and I became the trustee.
Q Does llen Weisselberg still work at the Trump

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Organization?
No.
Q When did llen Weisselberg stop working for the Trump Organization?
I don't know the exact date.
Q Can you approximate the year in which llen Weisselberg stopped working for the Trump Organization?
Probably within the last two years. I'm not sure exactly what the date was, so.
Q Was there a specific event that occurred that marked the basis for Mr. Weisselberg's termination from the Trump Organization?
The specific event could be his indictment.
Q So your testimony as you sit here today is because Mr. Weisselberg was indicted at that time his position at the Trump Organization was terminated?
His position wasn't terminated, but that role as trustee was.
Q nd just so that I'm clear, you're referring to a role of trustee. Was that a job assignment or was that something else?
I'm not sure I understand the difference.
Q You don't understand the difference between serving the Trump Organization in an employment role and serving as a trustee over a trust?

Well, our obligations as trustee were to serve the beneficiary of the trust. That was my father. That was similar perhaps to our jobs before. I imagine there is difference in nuance to that.

Q Okay. You said that Mr. Weisselberg was not terminated. What is your understanding of how Mr. Weisselberg ended his employment relationship with the Trump Organization?

I don't know the exact details.

Transcript continues on the following page...

Q Did he retire?

No.

Q Did you ask him to leave?

I did not.

Q Did your brother ask him to leave?

I'm not sure.

Q You have no knowledge as you sit here today as to the reason why Mr. Weisselberg is no longer employed by the Trump Organization?

I have no knowledge of the specifics of how it happened, so I was not involved, so I can't tell you.

Q What is your general knowledge?

He is no longer working at the Trump Organization.

MS. H BB : I'm just going to object. I think she mischaracterized his testimony, first of all. Secondly, we are now going down a rabbit hole of the same question asked seven different ways.

THE COURT: Sustained. Let's move on.

MS. F HERTY: Okay.

Q Did Donald J. Trump have any role in decision making at the Trump Organization between January 20, 2017 and January 20, 2021?

No.

Q How about since January 20, 2021?

Since January, I'm sure he made some decisions, yes.

Q When did his ability -- when did he resume making decisions at the Trump Organization after the January 20, 2021 date?

I don't specifically recall.

Q Sometime shortly thereafter or was it just yesterday?

I don't know.

MS. F HERTY: 1330.

Your Honor, I'm handing to the witness -- I've marked as PX-1330. I'm going to ask the witness to take a look at it and then I'll ask a few questions before I move to admit this exhibit.

THE COURT: Five-minute warning.

(Witness reviewing document.)

Okay.

Q Do you recognize this document, Mr. Trump?

I don't.

Q I'll ask you a few questions.

Did you receive power of attorney over certain of Mr. Donald J. Trump's affairs in or about March of 2017?

Yes.

Q The document in front of you, you can see on page one, it says, "This is a Power of ttorney New York Statutory Short Form," right?

Yes.

Q You could see the front page, there are some cautions

issued to the principal.

Do you have any understanding as to what a principal would be in a power of attorney short form?

None that I recall at this time. Though, I may have been briefed.

Q Fair to say that the principal -- if we turn to the -- page 6 of 8, looking at the signature block where there's a signature and acknowledgment section --

Yes.

Q -- there's the word "PRINCIP L" in capital letters. You see that there?

Yes.

Q Do you recognize the signature that is beside that?

I do.

Q Whose signature do you recognize that to be?

It's my father's.

Q So fair to say that this document, if you don't have a specific understanding, but this document reflects that the principal would be Donald J. Trump, yes?

Yes.

Q Okay. So on the front page, we have some warnings to the principal, your father, correct?

Yes.

Q Page two, there is a Subsection B, drawing your attention to that there. "Designation of agents," do you see

that?
I do.
Q It states, "I, Donald J. Trump, having an address at 1600 Pennsylvania venue, N.W. Washington, D.C. 20500," that was his address in Washington at the White House, yes?
Yes.
Q So from the White House, he hereby appointed. Is that your name there, "Donald J. Trump, Jr."?
It is.
Q Is that your brother's name, Eric Trump, yes?
Yes.
Q Each of you having an address, "care of the Trump Organization, 725 Fifth venue, New York, New York 10022 as my agents." You see that?
I do.
Q nd the Trump Organization at 725 Fifth venue, New York, New York, that was the same address you gave when you gave a business address at the beginning of your testimony here, yes?
Yes.
Q nd that's, again, affiliated with the umbrella entity, the Trump Organization, right?
Yes.
Q nd that marking underneath that looks like a quick D, is that your father's initial?
It is.

Q nd he has designated you as his agents in the Subsection B?
Yes.
Q nd then if we turn to the next page, Subsection F, it says, "The grant of authority." Do you see that header there?
I do.
Q nd then the explanation paragraph says, "To grant your agent some or all of the authority below, either (1) initial the bracket at each authority you grant or (2) write or type the letters of each authority you grant on the blank line at (P) and initial the bracket at (P). If you initial P, you did not need to initial the other lines." nd do you see he's indicated next to the "(P)?"
I do.
Q Fair to say that the grant of authority included , real estate transactions?
Yes.
Q nd D, banking transactions?
Yes.
Q nd so the grant of authority you had with this power of attorney was for real estate transactions and banking transactions, yes?
Yes.
Q nd under "modifications," it says, "The authority granted hereunder is solely with respect to the execution and

delivery of certifications and similar documentation (including, without limitation, compliance certificates) in connection with existing financing in which Donald J. Trump is a guarantor." Yes?
Yes.
Q nd you understood you had this authority, correct?
Yes.
Q nd then drawing your attention to page 7 of 8 of this document, Section O says, " gent's signature and acknowledgment of appointment." Is that your signature there as agent?
Yes.
Q nd then the signature just below yours, do you recognize that signature?
I think so.
Q Whose signature do you recognize it to be?
I believe it's my brother's.
MS. F HERTY: We can take a break now. Put that down, Mr. Trump.
THE COURT: s usual, we will take a 10-minute break that ends in 15 minutes. See you all at 3:42. I'll direct the witness not to talk to anybody about this case or his testimony or anything related to it while he's still a witness.
THE WITNESS: Thank you, your Honor.
(Witness exits the stand.)

(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
(Witness resumes the stand.)
THE COURT: Let's continue.
MS. F HERTY: Your Honor, I did not move to admit PX 1330 at the end of my last inquiry. I so move to admit now.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1330.)
MS. F HERTY: Thank you, your Honor.
Q We've spoken a little bit about it, Mr. Trump, but you're familiar with the Donald J. Trump Revocable Trust, correct?
Yes.
Q nd what do you understand the Donald J. Trump Revocable Trust to be?
It was the trust that governed my father's assets especially while he was president.
Q It said -- it contains for the exclusive benefit of Donald J. Trump, his assets, yes?
Yes.
THE COURT: Hold on. We finally have an opportunity to ask a real trustee. Is it revocable or

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revocable?
THE WITNESS: Your Honor, its's a good question that I actually don't have the answer for, so it is -- I actually used both and I'm not sure actually which is correct.
THE COURT: Ms. Faherty has sort of started us off on revocable, right? Is that how you pronounce it?
THE WITNESS: Revocable is easier, it seems.
THE COURT: That's what we'll do.
MS. F HERTY: Riveting.
Q nd you are, in fact, a trustee of the Donald J. Trump Revocable Trust?
I'm not sure what this is. I only understand revocable. Yes. Yes, I am.
Q Do you recall when you first became appointed a trustee of the trust? If I say "the trust," would you understand that to mean the trust that we're talking about?
Yes, ma'am.
Q Thank you.
Do you recall when you became a trustee of that trust?
Not specifically, no.
Q In or around the time period that you can recall?
Probably before my father assumed the presidency.
Q In or around January of 2017, does that seem fair?
Sounds about right.

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Q We'll get some documents. Maybe that'll help.
MS. F HERTY: Your Honor, PX 769 is already in evidence. We have it on the screen here.
THE COURT: Okay.
Q Mr. Trump, taking a look at this document, you can see at the top it is the Donald J. Trump Revocable Trust and it states as a subheading, " cceptance of Donald J. Trump, Jr. as trustee of the Donald J. Trump Revocable Trust."
Do you see that there?
I do.
Q nd do you recognize the signature at the bottom of this page?
I believe it's mine.
Q nd the date, do you recognize that that date, January 19, 2017, to be in or about the time at which you became the trustee of the trust?
Yes.
Q re you familiar with the ttorney General's complaint in this case?
Vaguely, yes.
Q Do you recall filing an answer and then an amended answer to the complaint filed by the ttorney General in this case?
I recall my attorneys filing it, but generally speaking, yes.

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Q You are aware that an answer was filed on your behalf, yes?
Yes, I am.
Q nd no -- you believe that that answer contains truthful representations of your actual position in responding to the ttorney General's pleadings in this case, yes?
I do.
Q I'll represent to you that paragraph 38 at the complaint states that "Donald Trump, Jr. and llen Weisselberg were trustees of the Donald J. Trump Revocable Trust until Mr. Weisselberg resigned in June of 2021. On information and belief Donald Trump, Jr. is now the sole trustee of the Donald J. Trump Revocable Trust. Donald Trump, Jr. is named in both his personal capacity and as the trustee of the Donald J. Trump Revocable Trust." That was the allegation.
nd your answer submitted, as you've just stated by your attorneys, is that as to paragraph 38, "Defendant denies the allegations therein except admits only that he is the sole trustee and was named in this action in his personal capacity and that Mr. Weisselberg was removed as a trustee in 2021."
Did you review any documents in order to prepare that answer to the complaint?
I don't recall.
Q Do you have any basis to deny that answer?
I don't know.

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THE COURT: You mean to deny the answer or deny the question?
MS. F HERTY: To rebut the answer that he filed in response.
THE COURT: To rebut, okay.
You have to ask the attorneys. I don't know.
Q I'm asking you do you have any basis to rebut that answer?
Not that I recall.
Q ny reason to believe that the answer your attorneys filed in regards to the ttorney General's pleadings -- any reason to believe that it contains false or incorrect responses?
No.
Q Can you explain the basis for that answer to me?
You'd have to ask them.
Q You have no basis as to who the trustees were and Mr. Weisselberg's resignation in June of 2021?
I'm not sure I understand the question.
Q Okay. Let's look at a document.
MS. F HERTY: Your Honor, our next document is PX 1016. It is already in evidence. I'm putting it on the screen here. It is a multi-page document. There are one, two, three pages of this document.
Q This document, can you see at the very top there, it says -- it is a reference to the trust again, yes?

Yes.
Q nd then the subheading on that particular document is " ppointment and cceptance of Trustee." Do you see that at the top there?
Yes.
Q nd do you see in the middle of the page, there is language -- I'll just draw your attention to the very first "whereas" clause. It states, "On pril 7, 2014, Donald J. Trump," that's your father, correct?
Yes.
Q It identifies him as the settlor and trustee. You see that there?
Yes.
Q Okay. So "Mr. Trump as settlor and trustee entered into an agreement of trust and by amendments," those dates are there, and then there are a number of "whereas" clauses. Do you see those?
Yes.
Q If we go further down on the page, you'll see that there's a "whereas" clause that, "Through the trust appointment, Mr. Trump or the settlor appoints himself as trustee under the assignment of trust and accepts such appointment effective as of 12:00 p.m. eastern standard time, January 20, 2021."
Do you see that in the very last "therefore" clause?
I do.

Q Did you have an understanding that in or about January 20, 2021, your father appointed himself as trustee of the trust?
I'm sorry. What was the date?
Q January 20, 2021.
I believe I'm aware of that, yes.
Q How did you become aware of that?
Conversations with counsel.
MR. ROBERT: I'm just going to object to the witness talking about any conversation with counsel as it is privileged.
MS. H BB : I instruct the witness not to discuss privileged conversations.
THE COURT: Okay. Can we let the answer stand, but from now on, we will be very vigilant.
So I assume you are aware of the attorney-client privilege.
THE WITNESS: I am, sir.
THE COURT: So keep that in mind.
Q Just turning to the next page of this document, recognize that signature there?
Yes.
Q Whose signature is that?
That's my father's.
Q nd does this indicate to you that between -- at some

point in 2 -- January of 2021, specifically on the 20th of January 2021, Donald J. Trump restored himself as trustee of the trust?
It would appear that way, but I'm not all that well versed.
Q What was your role as trustee, if at all, at that time?
I don't recall.
Q Did you have a continuous time period serving as the trustee of the Donald J. Trump Revocable Trust from January 2017 until present?
I'm not sure. I don't remember.
Q No understanding as it relates to this document whether at this particular time in January of 2021 you were still serving as a trustee; is that fair?
I think so.
Q Other than the fact that Mr. Trump restored his rights to serve as trustee in January of 2021, what else do you know? Don't tell me about conversations with counsel, but other than that, what do you know about Donald Trump serving as trustee over the trust in January of 2021 and going forward?
nything to that matter would have been done with counsel, so I don't know. I can't talk about it.
Q Other than conversations with counsel, no independent knowledge of Mr. Trump serving as trustee over the trust in January of 2021?

Right. I would rely on counsel for that kind of stuff.
MS. F HERTY: Your Honor, I handed forward an exhibit marked for identification as PX-1015. It is not in evidence. I am going to ask a few questions before I move to admit.
Q Looking at this cover e-mail and I'll just represent to you that this is how the documents attached to this e-mail were produced from the records of the Trump Organization by counsel, so this is from the files of the Trump Organization.
ny understanding as to whom dam Rosen is at the Trump Organization?
He is a lawyer.
Q How about lan Garten? Do you recognize that name?
I do.
Q Who is he?
He is our general counsel.
Q re dam Rosen and lan Garten both attorneys at the Trump Organization?
Yes.
Q re they still currently employed by the Trump Organization?
They are.
Q nd this is dated February 22, 2022. You see that there is a subject "trustee documents"?
Yes.

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Q nd then there are a series of attachments. Do you see those listed there?
I do.
Q nd I'll represent to you the body of the e-mail which says, "see attached." There are a number of bullets, one, two, three, four, five, six. You see them?
I do.
Q I'll represent to you those six bullets seem to correspond with the attachments to this message and you'll see that the first bullet is the resignation of DJT as trustee, yes?
Yes.
Q nd then there's an acceptance of Donald J. Trump, Jr. as trustee. That's you, correct?
Yes.
Q Then there is an acceptance of llen Weisselberg as business trustee. You see that?
I do.
Q Do you have any understanding as to what that's a reference to, a business trustee?
I don't.
Q Did you have an understanding that after January 20, 2017, llen Weisselberg's role as a trustee of the trust was to serve as a business trustee?
Not that I recall specifically.
Q nd then you see that the next bullet is the amendment

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to the trust?
Yes.
Q It states that it is removing W and Don as trustee. Do you see that there?
Yes.
Q ny understanding as to who W would be?
Off the top of my head, would probably be llen Weisselberg.
Q nd any understanding as to who Don is?
Me.
Q ny understanding that there were trustees other than you and llen Weisselberg serving as trustees to the trust?
Not that I recall.
Q nd then there is a document that says, "removal of DJT as trustee." You see that?
I do.
Q nd then there's lastly an acceptance of Donald J. Trump, Jr. as trustee. gain, you see that there?
Yes.
Q gain, that's a reference to you. You're Jr.?
Yes.
Q Let's turn to page 13 of this document. You'll see in the bottom there are numbers. It says -- page -- we'll look at 13 of 18. Tell me when you got there or otherwise, we have it projected on the screen for you.

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I'm here.
Q I will represent to you this corresponds with bullet five of that cover e-mail, okay. Do you see the very last "whereas" clause?
I do.
Q It says, "Pursuant to Sub rticle of rticle Thirteenth of the agreement of the trust, little romanette one, settlor." Remember that's a reference to Donald J. Trump, right?
Yes.
Q "Hereby appoints Donald J. Trump, Jr. as trustee under the agreement of trust and little romanette two, Donald J. Trump, Jr. hereby accepts such appointment effective as of 2:30 p.m. eastern standard time, July 7, 2021."
Did you, in fact, restore your position as trustee on July 7th of 2021 over the trust?
It would appear so.
Q Turning to the next page, you'll see a signature, a witness thereof, July 7, 2021. Do you recognize that signature?
I do.
Q Whose signature is that?
My father's.
Q If we turn to the next page, recognize that signature?
That is my signature.
Q That's your signature. So fair to say that as of

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July 7, 2021, you were restored as trustee, correct?
I believe so.
Q ny understanding as to what occurred in January 2021 and July 7, 2021 during which Donald J. Trump had assumed rights as trustee for that time period?
Not outside of conversations with counsel.
Q s you sit here today, are you aware of whether there has been any revocation of the January 20, 2021 appointment of Donald J. Trump as trustee?
I'm not sure.
Q s you sit here today, are you aware of whether Donald J. Trump is, in fact, still serving as a trustee of the trust?
I don't recall.
MS. F HERTY: Your Honor, I move to admit PX-1015 into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1015.)
Q I have marked for identification another exhibit. It is marked as PX-865. It is an e-mail. Take a quick look at that, Mr. Trump, and I'll just ask you a few questions when you are ready.
I can't read it because of that box. Is there anything that can tell me what's -- what's behind the "per discussion with" box?

Q Let's look at the underlying document. Do you recognize the name Christopher Schreiber?
No.
Q Do you recognize the name Sheri Dillon?
Yes.
Q Who do you recognize the name Sheri Dillon to be?
She is tax counsel with Morgan Lewis and was also trustee counsel and generally speaking worked as a lawyer, outside counsel for us.
Q When you say she was trustee counsel, is she one of the attorneys who provided you advice? Don't give me any substance of conversations, but she provided you advice as to the Donald J. Trump Revocable Trust?
I believe she set it up.
Q Other than setting it up, did you understand her to be one of the outside counsel that provided legal advice as to the trust?
Yes.
Q Do you recognize the name Donald Bender?
I do.
Q Who do you recognize the name Donald Bender to be?
Donald Bender was a CP . He worked as Mazars, LP. Prior to that, I guess Weiser. He was our accountant at the Trump Organization, outside accountant for decades handling -- I mean everything, practically everything. They did the audits

for some of our rental buildings, so he was an outside accountant that we relied heavily on for all of your accounting needs.
Q Your name is not included in this e-mail, right?
It is not.
Q Okay.
I got off of this one.
Q This is a 2017 e-mail between Sheri Dillon -- from Sheri Dillon to Donald Bender with the subject "confirmation of trust facts." You see the date on that e-mail as March 7, 2017?
Yes, ma'am.
Q nd let me just clarify. You have no understanding that Christopher Schreiber was another accountant who worked at WeiserMazars, do you?
I don't know that. I've never heard the name, no.
Q But Donald Bender was at Mazars? That's what you testified to?
Correct. Donald Bender would have been a point person for just about anything we did accounting wise.
Q nd I heard you to reference that there is a box, the red box in the upper right-hand corner of this document, yes?
Yes.
Q That document says, "Per discussion with Sheri Dillon on 1/8/21 and dam Rosen, assistant general counsel of the Trump Organization, on January 9, 2021-no amendments to the trust."

You see that there?
I do.
Q So does this -- would you agree with me this appears to be a stamp relating to a 2021 conversation on top of a 2017 e-mail?
Perhaps it appears that way, but I don't want to speculate as to something I had nothing to do with.
Q Okay. Do you have any understanding as to a conversation Sheri Dillon had on January 8, 2021 with dam Rosen, counsel of the Trump Organization, on January 9, 2021 regarding no amendments to the trust?
I have no knowledge of it.
Q Okay. We can put that to the side. Don't tell me the substance of the conversation, but did you have any conversations with Ms. Dillon on or about January 8th or January 9, 2021 with regards to the status of the trust?
Not to my knowledge, no.
Q Did you have any conversation -- do not tell me the substance of it -- with dam Rosen on or about January 8th or January 9, 2021 with regards to the status of the trust?
Not that I'm aware of or can recall, no.
Q Okay. nd did you have any conversations with anyone at Mazars on January 8th or January 9, 2021 with regards to the status of the trust?
Not that I know of.

THE COURT: Try not to say "okay" after each answer.
MS. F HERTY: I did it as a whisper, Your Honor, but I will do it. I'm sorry.
THE COURT: That was quiet. Other times, it is more audible.
Q What is your understanding as to the responsibilities of the trustees over the trust?
I have an obligation as a fiduciary to function in the best interest of the beneficiary of the trust.
Q What does that mean?
Do what's in the best interest of the beneficiary of the trust.
Q Do you manage the assets of the trust?
Yes.
Q What are the types of decisions you make as a trustee of the trust?
ny of the business decisions related to the ongoing operating businesses of the trust. If we were working on new deals, that would fall in there, but we are very limited in terms of what new deals we were going to do because when my father assumed presidency, we stopped doing all of the international deals that was -- it -- primary part of my role in the organization, but anything and everything.
Q nd who do you consult with with regards to the

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decisions of the trust as a trustee?
Well, I could have consulted with any number of people in the organization. I mean, you have individual deals that have point people. You're going to talk with them. Many cases, you're talking with counsel. Many cases, you're talking obviously with accounting. So I mean, it could be dozens of people that we're dealing with on a daily basis to make an informed decision about an individual asset.
Q I believe you testified that you and llen Weisselberg for a period of time were both trustees of the trust at the same time, right?
That's correct.
Q Until he was removed from serving as a trustee, correct?
That's correct.
Q You don't have a specific recollection as to the time, but it was within about one to two years from today, right?
Correct.
Q ny other persons serving as a trustee over the trust with you other than the exception we discussed with Mr. Trump appointing himself as a trustee in January of 2021 until July 2021?
Not that I recall.
Q How about Eric Trump? Was he ever a trustee over the trust?

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I don't believe he was.
Q Did you ever have to consult with Eric Trump in your decisions with regards to the trust?
I would obviously consult with Eric. He was a key point person on many, many deals and operating entities and I trust him explicitly and if I needed to consult with him on issues that he was more well-versed than I would have been.
Q nd did Eric Trump have any authority to make decisions on behalf of the trust?
He would have had authority to do things within the Trump Organization. I don't know if that gives him authority specifically within the trust, but if he said something that he wanted to do on a project that he was in charge of, I'd have no issue with that and I understand that he would do the appropriate diligence to make that decision and that's how I would base my decision.
Q Do you need me to have the court reporter read the question again? I don't think that was responsive.
Please ask it again.
MS. F HERTY: Can I have a readback?
MS. H BB : I think that was perfectly responsive.
THE COURT: I thought it was responsive, too, but let's have a readback of the question and the answer, right.
MS. F HERTY: Sure.
(Whereupon, the requested portion of the record was read back.)
(Continued on the next page.)

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THE COURT: re you still objecting on grounds of nonresponsiveness?
MS. F HERTY: Confirm for me your understanding Eric Trump did not have any authority to make decisions on behalf the trust?
THE COURT: Is that a different question?
MS. F HERTY: different question. I'm going to let the answer stand.
THE COURT: Okay.
That's correct, I guess, ma'am.
Q So focusing on the time period from 2011 to 2020, I heard you just say earlier that you worked on licensing deals?
Yes.
Q For the Trump Organization; yes?
Yes.
Q How about management deals?
Yes.
Q re those similar to each other?
They can be. They can often overlap, but sometimes a licensing deal may involve licensing the brand to put a Trump building somewhere in the world. That may or may not come with a management deal. management deal may be if it was a hotel entity. If it was in the United States or if it was in New York, it would likely come with a management deal to operate the building afterwards because we do that. That may not make the

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most sense somewhere else in another part of the world where we don't have that level of expertise, so there is not a fixed rule.
Q nd what is your role with regard to the management deals? gain, focusing on the time period 2011 to 2020.
Just depends on which deals you're talking about.
Q Generally speaking.
If you're talking about hotel management deals, I would have been, you know, a point person on getting a lot of those done.
Q What does that mean?
I would have been likely the guy in charge of a lot of those deals, certainly internationally where we were doing a lot of that kind of, you know, hotel management deals and setting that up. That would have been something that fell into my court.
Q Is it a fair characterization that the management deals would be putting Trump Organization personnel to assist in the management of a hotel operation even if it wasn't necessarily a Trump Organization hotel?
Yes.
Q But it could also include Trump Organization hotels; yes?
That's correct. We owned and operated as well as managed for others.

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Q On licensing agreements what is your role with regards to licensing agreements?
gain, I was probably the primary point person for a lot of our international licensing deals.
Q nd what is a licensing deal?
Developer wants to build a building, they want to know how to do that better, they want to put the Trump brand on it, they want to learn to build to that standard, they want to learn how to value, engineer and create luxury perhaps in a market where that's not as common. So, you know, again, anything and everything to take, you know, a building and make it something befitting our brand.
Q Would it be permitting a third party to use the Trump name in the course of its business?
Yes.
THE COURT: I'll ask the interrogator and interrogatee to talk a bit slower. The report is having a lot of difficulty keeping up with the rapid fire.
THE WITNESS: I apologize, Your Honor. I moved to Florida, but I kept the New York pace.
THE COURT: We've noticed.
Q I heard you just say that this could be worldwide. Fair to say that between these management deals and licensing deals. Would that be domestic deals; yes?
Yes.

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Q nd was there a period of time when that also included foreign deals?
Yes.
Q So, for example, did you have any management or licensing deals in the sias?
In what?
Q The sias?
The sian continent? Yes, we did.
Q How about in the Middle East?
Yes, we did.
Q Would those be considered the foreign deals that you had?
We call them international, but yes.
Q nd then the domestic deals, that would be here in the continental United States?
Correct.
Q Including Hawaii, too?
Yes.
Q Do you recall how you were compensated for work you performed on management deals and licensing deals for the Trump Organization?
Generally speaking, yes.
Q Describe for me how you were compensated for this work.
Well, I mean, I'd have to go through each deal, right, sort of -- it was different, but there was an evolution in our

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compensation where, you know, as we started, you know, seeking other deals abroad and that -- certainly to have a person with a last name Trump and a principal in the room help make that happen and we were branching out from New York quite a bit and we started taking and getting a small piece of the revenue that came in from those deals.
Q nd I believe earlier today you testified that you were paid by an entity Trump Payroll Corp; yes?
For our salary, correct.
Q For salary.
Yes.
Q Did you receive compensation for your licensing and management deals separate and apart from the salary you received from the Trump Payroll Corp?
If we brought in deals we got a small piece of those deals as we, you know, brought and signed up new deals and created revenue for the business, yes.
Q nd what was the entity that paid you for those deals?
I believe it was TTT Holdings.
Q Sorry. Say that again?
I believe it was TTT Holdings.
Q If I said the name TTT Consulting LLC?
Maybe that's what it is.
Q Okay.
It's been awhile.

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Q nd TTT Consulting LLC, is that an entity by which not just you, but your siblings Eric and Ivanka, were paid for those licensing and management deals that you worked on with regards to the Trump Organization's brands?
Yes.
MS. F HERTY: Your Honor, I'm going to hand up to the witness a document that I've marked for identification as PX 1259. It's not in evidence yet. I'm going to ask a few questions and then I'll move to admit.
Q nd Mr. Trump, please just take a moment, look at the document in front of you and when you're ready I will ask you a few questions.
Okay.
Q Looking at this cover e-mail --
MR. KISE: Your Honor, Your Honor, sorry, but this is one of those times I'm just going to object on relevance. This is one of those times I would expect the Court as it has done to us to move the government along. I'm not sure what any of this has to do with TTT Consulting. We've spent an hour here and we're basically just talking about what roles he had and who he reported to and some trust documents and now we're talking about TTT Consulting which last I checked isn't in the complaint. Maybe it's somewhere in the 850 paragraphs, but I don't see where we're going at all with this and I would expect the Court as it has done

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repeatedly to the defense to ask them to move it along. Whether they do or not, I don't know, but I would certainly expect the same instruction.
THE COURT: Move it along as fast as you can.
MS. F HERTY: You already told me not to speak so fast, Your Honor. I'm doing my best.
THE COURT: The substance, move along as fast as you can.
Q Did you have a moment to look at this document, sir?
Yes.
Q Looking at the very bottom --
MR. ROBERT: Objection. Relevancy and statute of limitations.
THE COURT: Well, I don't know what it is yet.
MR. ROBERT: I'm having difficulty hearing Ms. Faherty. I thought she said move it in.
THE COURT: No, she did not.
MR. ROBERT: If you can talk a little bit louder, so I could hear it.
MS. F HERTY: I'm happy to speak louder if that's helpful.
MR. ROBERT: That would be great.
Q Look at the bottom e-mail, Mr. Trump.
Do you recognize the name Katherine Feigin, F-e-i-g-i-n?

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Yes.
Q Who do you recognize that name to be?
My assistant during that time frame.
Q Your assistant at the Trump Organization?
Correct.
Q Okay. nd it's from an e-mail address Scane-mail@Trumporg.com. Is it your understanding that's an e-mail from a scanner at the Trump Organization?
I would imagine so, yes.
Q Okay. nd this appears to be a forward without any message in the body from Ms. Feigin to you. Do you see that?
Yes.
Q On June 25, 2013 at 2:52 p.m., and in the very top e-mail, that's your e-mail address at the Trump Organization -- well, that's you, Donald Trump, Jr.; right, in the "from" column?
It would appear so.
Q nd it's addressed to Jeff McConney, Ivanka Trump and Eric Trump; yes?
Correct.
Q Subject is a forward. Nothing else in there; right?
Correct.
Q You see that there is an attachment to this message now?
I do.

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Q nd then in the body of your message you write, "signed TTT." Do you see that there?
I do.
Q Is TTT the entity we were just referring to, TTT Consulting LLC?
I believe it is.
Q Okay. nd just drawing your attention to the attachment again, I'll represent to you that this is the document produced from the Trump Organization's files. This is the attachment that was contained -- attached to that message. Do you recognize this document?
Not specifically, but I have no reason to believe it's not a real document.
Q Okay. nd there is a signature block at the bottom right hand corner of this page? Do you see it says "okay" and then it looks like that "D" symbol your dad initials with?
Yes.
Q You recognize that to be an "okay" and an initial from your father, Donald J. Trump?
Yes.
Q nd the heading on this document says "Donald J. Trump et al., Schedule of Fees due to TTT Consulting LLC for the period pril 1, 2013 to June 21, 2013." Do you see that?
Yes.
Q nd then there is a series of columns on this document.

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The first is an entity column. You see it on there?
Yes.
Q So DT Marks & Baku LLC?
Yes.
Q nd then DT Dubai Wealth Manager LLC?
Yes.
Q It goes down THC. Is that Trump Hotel Collection? Which one is that?
Q THC, is that a reference to Trump Hotel Collection?
Well, specifically to Vancouver Management, but yes, that was likely Trump Hotel Collection.
THE COURT: Yes, Mr. Kise.
MR. KISE: This is a very interesting sojourn into a decade old TTT document, but I just have to object on this entire line of questioning. It's completely irrelevant to this case. Is there any connection that's going to happen at any point?
THE COURT: Ms. Faherty, what is the relevance?
MS. F HERTY: Your Honor, there are licensing deals and management deals. First, the entities that are identified here in this column are the entities for which receive licensing fees and management fees which feed into the Statement of Financial Condition. It is a category within the Statement of Financial Condition and the three children or adult children Eric Trump, Mr. Trump, Jr. on the

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stand right now, and Ms. Ivanka Trump, who we will appear here later next week, all were members of TTT Consulting LLC that received the benefits for the deals they secured abroad that fed in the Statement of Financial Condition.
THE COURT: nd the relevance of that?
MR. KISE: Right.
MS. F HERTY: It all feeds into the statement of financial condition. It's a category of the Statement of Financial Condition, Your Honor.
THE COURT: Not everything in the statements of financial condition is relevant or at issue.
MS. F HERTY: It's the transactions of third parties. I mean, it has been apart of our case, Your Honor.
MR. KISE: I think everything has been apart of their case.
MS. F HERTY: You don't think anything has been apart of our case as well as everything has been apart of our case. I know you don't like it when certain questions come in, but I'd move faster if I would be permitted to ask my questions.
MR. KISE: If you would stick to relevant topics, certainly but this is ten years ago a distribution sheet for consulting deals with no plausible connectivity to anything that's at issue here.
MS. F HERTY: For which Donald Trump reviewed the

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spreadsheet of the fees, saw them, approved of them.
MS. H BB : Now you're testifying, Colleen.
MS. F HERTY: I am not. I got him to testify as to the signature on this page. You know you don't like it when good evidence comes in, but please, allow me to continue.
MR. ROBERT: There is no reason to raise your voice, Ms. Faherty. There is no way compensation paid or whatever is here showing to Mr. Trump on the stand his brother or his sister flows into the Statement of Financial Condition. It's apples and oranges. It's completely irrelevant and I agree that this line of questioning should end.
THE COURT: Well, let me go back to Ms. Faherty. I understand you're saying these figures feed into this the Statement of Financial Condition. So what. Not everything -- am I correct not everything that fed into the any Statement of Financial Condition is relevant or am I missing something?
MS. F HERTY: No, Your Honor. You're not missing anything. You've appropriately heard me to say that this was one aspect of financial information contained on the Statement of Financial Condition. I'm going to continue asking, if you'll allow it, about the foreign deals, several of those are listed on here, the foreign deals that were represented to have ceased to exist. We have testimony from

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other witnesses that have already come in as to whether those foreign deals were actually reflected in the Statement of Financial Condition. I think I'm allowed a little bit of room, Your Honor, to continue.
nd also, just noting again this was reviewed by and approved by Donald J. Trump with the numbers and figures on this particular document.
MS. H BB : Your Honor, I'm just going to state one objection as the President's attorney. He will be here on Monday. We have Donald Trump, Jr. on the stand.
THE COURT: Objection overruled without prejudice. I see possible relevance at this point. I hope it will be clearer later on.
MS. F HERTY: I have two more questions on this document and we'll move along.
Q So in this document I was starting to ask there is a column for entities; right?
Yes.
Q nd then the categorization of where that deal location is in that second column. You see that there?
Correct.
Q nd there is a third column, a fee received for those particular transactions; yes? That's included in there?
Correct.
Q Those are redacted line for "fees paid to Daewoo." ny

understanding about that?
Vaguely.
Q Then there is "amount subject to fee;" right?
Yes.
Q nd then you have a column "fees due to TTT." You see that in there?
Yes.
Q nd then it's split amongst DJT, Jr., Ivanka and Eric; yes?
Yes.
Q We can move on.
MS. F HERTY: Your Honor, I move into evidence PX 865 and 1259. Those are the prior two exhibits we just discussed.
MR. ROBERT: Objection. Statute of limitations and relevance.
THE COURT: Overruled.
MS. F HERTY: Thank you, Your Honor.
(Whereupon, the items previously referred to are received and marked Plaintiff's Exhibit Numbers 865 & 1259 in evidence.)
Q So with regards to the deals that TTT Consulting LLC paid you for, do you recall the way in which you reported back to the Trump Organization that those management or licensing deals had been confirmed?

I don't specifically recall, ma'am.
Q Would there have been a contract that was signed with whatever the third party was?
Of course.
Q ny other way in which you may have reflected that there were confirmed deals whether they were management or licensing?
Conversations, but obviously everything would have been contractual, right. You're not doing a deal on a handshake anymore.
Q ll right. Let's look at the Statement of Financial Condition for June 30, 2017.
MS. F HERTY: Your Honor, this is already in evidence as PX 755.
Q Mr. Trump, a court officer will hand it to you, but I'll also represent to you it's on the screen. You can follow along at either. Do you recognize this document, sir?
No.
Q Did you ever perform work on --
MS. F HERTY: Excuse me, Your Honor.
Q Did you ever perform work on the Donald J. Trump Statement of Financial Condition for any year?
Not that I recall, no.
Q No specific knowledge, sir?
No.

THE COURT: That was a negative question with an ambiguous answer.
THE WITNESS: I have no specific knowledge, no.
THE COURT: That answer is not ambiguous.
Q Can we turn to the second page of this document?
Yes.
Q The second page is an "Independent ccounts' Compilation Report." In the opening paragraph it states: "The trustees of the Donald J. Trump Revocable Trust dated pril 7th 2014 as amended on behalf of Donald J. Trump are responsible for the accompanying Statement of Financial Condition as of June 30, 2017 and the related notes to the financial statement in accordance with accounting principles generally accepted in the United States of merica."
If we go down to the bottom of the page you'll see it as dated October 30, 2017. Do you see that?
I do.
Q It's signed by WeiserMazars. This is WeiserMazars' representation that this Statement of Financial Condition was prepared at the responsibility of the Donald J. Trump Revocable Trust trustees. Is it your testimony that this statement contained in the Statement of Financial Condition does not include you, Donald Trump, Jr.?
I don't know. I signed off on a document that Mazars prepared with intimate knowledge and as a trustee I have an

obligation to listen to those who are expert -- who have an expertise of these things. So I trust in llen Weisselberg who is an accountant. I trust Mazars who is a CP and a Big 5 accounting firm to put together a document of this nature.
So if they put something in, I wasn't working on the document, but if they tell me it's accurate based on their accounting assessment of all of the material -- and, again, Mazars, you know, when you look at Trump Park venue they did the tax return for the condominium that we no longer necessarily even own. We may have a couple units left, but these people had an incredible intimate knowledge and I rely on them.
MS. F HERTY: Your Honor, I move to strike that response.
THE COURT: Can you read the question back, please?
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
THE COURT: I'll strike the answer because it goes all over the place. I don't think the question is that clear.
MS. F HERTY: Okay.
I won't re-read this first.
Can you move up, shley, to the first sentence?
Q "WeiserMazars have made a representation as to whom is responsible for this Statement of Financial Condition." You see that statement there?

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Yes.
Q Is it your -- is it your testimony that you are not involved --
THE COURT: It's a negative. Can't you just ask him if he was responsible?
MS. F HERTY: Your Honor, I did ask him if he was involved in the preparation of the Statement of Financial Condition. I'm now asking a question as to this statement if he understands if he is not included in this statement.
I'm not included in this statement or I am included in the statement?
Q re you a trustee of the Donald J. Trump Revocable Trust?
I am.
Q s of October 30, 2017?
October 30, 2017? I believe by then I would have been, yes.
Q Did you work on the Statement of Financial Condition for June 30, 2017 for Donald J. Trump?
I did not. The accountants worked on it. That's what we pay them to do.
THE COURT: Five-minute warning.
Q I'll draw your attention to page 21 of 24 of this document, footnote five, "Real Estate Licensing Developments."
Yes.

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Q Turning your attention to the second paragraph. The second sentence states that "the estimated current value of $246 million was based on an assessment made by the trustees in conjunction with their associates and outside professionals of the cash flow that is expected to be derived from these associations as their potential is realized."
You did not provide this estimated current value of $246 million as is represented in this paragraph here; correct?
I didn't give them a value of $246 million, but I could have sat there and gone through each one of the deals individually with llen Weisselberg, with Jeff McConney, with Donald Bender and given them an idea of what I believe the cash flow coming from those deals would be worth not even knowing that it was for the purpose of this. So I could have certainly partaken and I probably would have had the most intimate knowledge about those deals, but it doesn't mean that I used that to put this together. They did that and so I could have very well been involved in inferring that number but not specifically know that I was working for that purpose.
They could have asked me on any given day what some deal was going to produce and, you know, again, for a lot of the deals on that list I would have been the primary point person and had the most intimate knowledge and I could have given them that answer but not known it was used to compile in this, but, correct. Meaning, I could have discussed the details of a deal

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which they would then infer is going to generate X number of revenue. They may have done that a hundred times with me to get a number but I may not have known that it was going to be used in aggregate for the Statement of Financial Condition so that -- I mean --
Q I know you said you could have. What is your specific recollection as to this paragraph valuing the $246 million figure under sub point five, "real estate licensing developments" contained in the 2107 Statement of Financial Condition?
MR. ROBERT: Objection, Your Honor.
THE COURT: Overruled.
I don't recall. I don't remember.
MR. KISE: Your Honor.
THE COURT: One or two minutes.
MR. KISE: So I just want to understand something. PX 1259 which was the document we spent so much time debating, the 2013 TTT Consulting document, is this now the connection that's being drawn between -- this was admitted subject to connection based on your prior statements that the relevance wasn't completely clear, but you think it was going to become clear. So I --
THE COURT: Well, I think it became clear, so.
MR. KISE: Well, this is 2013 and this is 2017. So I'm just wondering is this is what Ms. Faherty is drawing is

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the connection. She said she was going to connect this up, so I'm just trying to figure out whether it's this line of questioning or there is some line of questioning that relates to the 2013 Statement of Financial Condition.
THE COURT: Can you answer that?
MS. F HERTY: I also think his very long extended answer provided plenty of a connection as to that particular document. I understand if they want to object to statute of limitations, but I have proved it up, Your Honor. I still stand by the admission.
MR. KISE: Your Honor, we've gone completely through the looking glass, completely, fully. This is a 2013 document. 1259 is a 2013 document and this is a 2017 Statement of Financial Condition. What the two have to do with one of another other than in the most general sense I'm not sure, but I would very much object to the fact that there's been a connection.
THE COURT: Well, is there a connection and if so, what is the connection?
MS. F HERTY: The connection is as it relates to the work he performed for TTT.
Q t any point did you stop providing work for TTT Consulting LLC?
Well, we stopped doing a lot of our international deals when my father assumed the presidency because we weren't

-- we voluntarily chose not to do that so as not to create a conflict.

Q TTT Consulting LLC?

We wouldn't do any new deals, so those deals would have fallen under the purview of TTT.

Q nd your father assumed the presidency in 2017; yes?

Correct.

Q nd you still maintained domestic deals; yes?

We maintained existing deals that you couldn't just back out of if you had contractual obligations to.

Q Do you still receive payment from TTT Consulting LLC?

I don't actually know.

Q You have no knowledge as you sit here today what, if any, distributions you receive from TTT Consulting LLC?

MR. KISE: Objection. Relevance.

Not really no.

THE COURT: Objection. Ground?

MR. KISE: Relevance today?

THE COURT: Overruled, but he did answer. It's asked and answered. You asked him twice do you remember or did he have deals.

MS. F HERTY: I think we said foreign deals and I went to domestic deals. There was the distinction there, Your Honor, because as you can see in this particular document which --

THE COURT: Objection overruled. I see the connection. We'll see you all tomorrow at 10 o'clock.

MS. F HERTY: Thank you, Your Honor.

THE WITNESS: Thank you, Your Honor.

THE COURT: I'll order the witness again don't discuss this case or your testimony or anything related to it while you're still a witness which will continue until tomorrow.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

(Whereupon, the trial proceedings are adjourned to Thursday, November 2, 2023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al.

DON LD TRUMP, JR., ERIC TRUMP
November 2, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

Index No.
-against- 452564/2022
DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X
Supreme Courthouse
60 Centre Street
New York, New York
November 2, 2023

B E F O R E:
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Justice, Supreme Court

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PROCEEDINGS Page 3224

THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cellphones are on silent. Laptops and cellphones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now, be seated and come to order.

THE COURT: There is no photography allowed in the courtroom, but we're going to let in the photographers now.

(Whereupon, there was a pause in the proceedings.)

THE COURT: I understand we have at least one housekeeping matter about three witnesses.

MR. W LL CE: Certainly, Your Honor. We just noted our objection to defendant's plan to call three witnesses, former and current Deutsche Bank employee, by videotaped deposition because the witnesses are amenable to subpoena in New York.

THE COURT: What is the defendant's current position and intention?

MR. ROBERT: We will be talking to their lawyers as we were informed. s we've been talking to their lawyers in the past, they said the witnesses will be unavailable, but we'll continue to speak with them and report back what we learn.

THE COURT: Okay. There's unavailable and there's

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unavailable. So they can testify in person like --

MR. ROBERT: Two of them are definitely out of state. The third is, as I understand it, a resident of New York State, but we had been told previously may be unavailable, but we'll confirm all that.

THE COURT: ll right. Just let us know.

MR. ROBERT: Yes. Thank you, Your Honor.

MR. W LL CE: I would just note that we agree, as we note in our letter, that two witnesses are out of state. One is still a current Deutsche Bank employee and to our view is amenable to subpoena through the bank and the other one is employed in New York and so is regularly appearing in Manhattan to work at Morgan Stanley.

MR. ROBERT: Our view, and we don't need to belabor the issue, we argued this last Friday with the deal with Ms. Trump's subpoena. We're dealing with the lawyers for the parties. They'll let us know their position. If they want to get involved at some point, they will, but we will report back in due course.

THE COURT: Perfect. Shall we resume the testimony?

MS. F HERTY: Yes, Your Honor.

We recall Mr. Donald J. Trump, Jr., please.

(Witness resumes the stand.)

THE COURT: Let's continue.

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MS. F HERTY: Thank you, Your Honor.
D O N L D T R U M P, J R. , a witness called by the Plaintiff, after having been previously sworn by the Clerk of the Court, took the witness stand and testified as follows:
Q Good morning, Mr. Trump?
Good morning.
Q Did you have any conversations regarding your testimony yesterday since you left the courthouse?
No, I didn't.
MS. F HERTY: ll right. I'm going to hand up to the witness a document that has already been admitted into evidence. It is identified as PX-756.
Q Mr. Trump, it will also be on the screen. The court officer will hand it over to you. I'll represent that this is the June 30, 2016 Statement of Financial Condition of Donald J. Trump.
Do you have that in front of you, sir?
I do.
Q re you familiar with this document?
No.
Q Did you help prepare this document?
I did not.
Q Did you review this document?
I may have seen this document in preparation for either my testimony here or in my -- at my prior deposition, but

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otherwise, no.
Q Fair to say you didn't specifically prepare any of the valuations contained within in document?
That's correct.
Q nd just turning to the second page of this document, do you see under the independent accountant's compilation report dated March 10, 2017?
I do.
Q nd at the very top, the opening paragraph says, "That the trustees of the Donald J. Trump Revocable Trust are responsible for this Statement of Financial Condition"?
Yes.
Q Okay. You can put that down.
MS. F HERTY: Your Honor, I'd like to put on the screen Plaintiff's Exhibit PX 742. It has already been admitted into evidence.
Q Mr. Trump, it's a spreadsheet, so it will only be on the screen because it is a pretty large document.
Fair enough.
Q re you familiar with this document on the screen?
Not to my knowledge.
Q Fair to say you did not help prepare this document?
I don't know anything about the document, so I imagine so, yes.
Q nd I'll represent to you that the title on this

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document is "Donald J. Trump Statement of Financial Condition as of June 30, 2016."
Fair to say you're not familiar with a support data spreadsheet prepared in connection with the Donald J. Trump Statement of Financial Condition?
I don't know. If that is this, then I'm not familiar with it. I'm not familiar with a document of that nature, no.
Q nd specifically referencing this document on this screen, you have no specific familiarity with this document, correct?
Correct. I don't believe I've seen this document.
Q Did you specifically prepare -- withdrawn.
MS. F HERTY: I'm going to hand up to the witness a document that is not yet in evidence. It is marked for identification as PX-1344. Take a moment to look at it and I will ask you a few questions, sir.
(Witness reviewing document.)
Okay.
Q Do you see in the underlying e-mail, there is a message from Noah K-I-R-S-C-H at forbes.com e-mailing lan Garten on Friday, March 3, 2017 at 10:00 a.m. a message with the subject "urgent, fact checking inquiry from Forbes."
Do you see that underlying e-mail?
I do.
Q nd contained within that e-mail, do you see that there

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are a number of emboldened headings. The first one on the cover page of this e-mail, it says, "Trump Organization."
Do you see that there?
I do.
Q If you turn to the next page of this e-mail, do you see in the middle of that page there is an e-mail with a heading "Trump Tower penthouse"?
I do.
Q nd you see that there are a series of questions related to that heading "Trump Tower penthouse, one through ten"?
Yes.
Q nd in the first sentence, it references, "President Trump has told Forbes in the past that his penthouse occupies 30,000 square feet comprising the entirety of floors 66-68 of Trump Tower "--
THE COURT: It says 33,000, not 30,000.
Q 33,000.
MS. F HERTY: Thank you for the correction, Your Honor.
Q Do you see that first line there?
Yes.
Q nd then it subsequently says, "It shows President Trump's apartment is 10,996.39 square feet' referencing the property records in the prior sentence. Do you see that?

I do.
Q Okay. nd then on that very same day, if we go back to the cover page, lan Garten, he works at the Trump Organization. We discussed him yesterday?
Correct.
Q lan Garten forwards this message to you, correct?
It would appear so, yes.
Q nd then llen Weisselberg and Eric Trump, right?
Correct.
Q s well as manda Miller?
Yes.
Q Who's manda Miller?
She was running our marketing department at the time.
Q nother employee of the Trump Organization?
Yes.
Q nd then the very top e-mail, that's your e-mail address responding at 12:46 p.m., yes?
Correct.
Q nd you write "insane amount of stuff there," yes?
Yes.
Q Do you recall receiving this message?
No.
Q side from this specific message, what, if any, fact checking did you do to follow up on the message contained in Mr. Kirsch's e-mail?

I don't know that I did any. I don't know that I would spend hundreds of questions worth of time on answering Forbes Magazine.
Q So no specific recollection as to what you did, yes? You don't have that recollection?
I have no specific recollection of doing anything with it.
Q What conversations did you have about this e-mail?
I don't know that I had any.
Q So no specific recollection about conversations?
No.
Q Okay.
MS. F HERTY: Your Honor, I move to admit Plaintiff's Exhibit P X-1344.
THE COURT: Granted. It is in.
MS. F HERTY: Thank you, your Honor.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1344.)
Q Mr. Trump, I'm going to display on the screen and ask the court reporter to hand up to you a document already in evidence. It is identified as PX 741.
Do you see that document in front of you, sir?
Yes.
Q nd this is on Trump Organization letterhead, yes?
Correct.

Q I'll turn your attention to page three of this letter. Do you recognize that signature on the bottom right-hand corner of page three?
That's my signature.
Q Okay. Turning back to the front page, this letter is dated March 10, 2017, correct?
That is correct.
Q This is one week after your e-mail in which you stated "insane amount of stuff here" with regards to the Forbes inquiry?
Presumably, yes.
Q Mr. Trump, in connection with the work Mazars performed on the Statement of Financial Condition, the Trump Organization presented Mazars with a signed representation letter, correct?
I believe so.
Q nd this is one such representation letter, correct?
I believe that's correct.
Q Okay. Turning your attention to the first page, the third paragraph states, "We confirm, to the best of our knowledge and belief, as of March 10, 2017, the following representations made to you during your compilation."
Do you see that language there?
I do.
Q nd then following that confirmation, there is a subparagraph number one. Do you see it?

I do.
Q nd then if you turn to the next two and three pages, you'll see there are numbered paragraphs going up to paragraph 16. Do you see those?
I do.
Q nd we'll just talk about a couple of the representations that the Trump Organization confirmed in this letter.
Do you see point two, the representation is, "We have made available to you all financial records and related data, and any additional information you requested from us for the purpose of the compilation. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation."
You see that that was a representation in this letter?
I do.
Q nd in paragraph four, there's another representation. "We acknowledge and have fulfilled our responsibility for designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the personal financial statement that is free from material misstatement whether due to fraud or error."
Do you see that representation?
I do, yes.
Q nd at point five, there's another representation, "We

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acknowledge our responsibility for designing, implementing and maintaining internal control to prevent and detect fraud."
I do.
Q One more representation just to draw your attention to it. Make sure that you see it is there. Number 15, "We have responded fully and truthfully to all inquiries made to us by you during your compilation."
Do you see that representation on behalf of the Trump Organization there?
I do.
Q Do you agree with those representations in this letter?
I do. Every decision I made was based on all of the information that I would have gotten from Mazars who ironically is also the one we're writing this letter to, but they were intimately involved in every aspect of that. nd again, for purposes of accounting, I rely on the accountants and so while I make these representations to them, they have frankly as much, if not more, information in the details of all of this than I ever would have had.
Q So you relied on Mazars to make these representations to Mazars?
I relied on Mazars and our accounting team to tell me what is accurate within the confines of accounting. That's why we have accountants.
Q So in addition to Mazars, you make a reference to "our

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accounting team."
Who is that accounting team you're referencing as you're sitting here today?
That would have been llen Weisselberg, Jeffrey McConney and their team.
Q nd in specifically as it relates to this 2016 representation letter, were you relying on llen Weisselberg to make the representations in this rep letter?
I'd have to see what the backup is. I don't recall ever being involved in any of that. But yes, I would imagine -- I'll try to slow it down. Yes, I would have relied on them, but again, I would have also relied knowing that they're working intimately with Mazars and I understand, you know, the world around this time is changing and this could be, let's call it, a cover your butt, but Mazars for 30 years is intimately involved in literally every aspect, every transaction, every LLC. They would have been a key point in compiling anything as it related to accounting and they would have been well aware of that.
MS. F HERTY: Your Honor, I would move to strike that answer and I can ask my question again.
THE COURT: I remember the question. Overruled. That's his response.
MS. F HERTY: Okay.
THE COURT: nd I think it responded to the

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question, maybe at great length, but --
MS. F HERTY: Okay.
THE WITNESS: I'm just trying to give the details, sir. Sometimes things aren't, unfortunately, yes or no when it comes to the complex transactions.
THE COURT: Okay.
THE WITNESS: I'll try to hone it down.
Q s it relates to this representation letter, did you specifically rely on Jeffrey McConney to assure yourself of the representations contained in this letter?
Specifically as it relates to this letter, I don't recall who I relied on.
MS. F HERTY: Your Honor, I'm putting before the witness a document that is not yet in evidence. We have marked it for identification as PX-391.
Q Mr. Trump, I'll turn your attention to the second page of this document. Do you recognize that signature on the second page of this document?
That is my signature.
Q nd it is signed as "attorney in fact"?
Correct.
Q Do you have any understanding as to what "attorney in fact" is a reference to?
Well, I guess I'm functioning as an attorney for my father as per, I guess, whatever the lawyers structured for me

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at the time.
Q Okay. Turn your attention back to the first page of this document.
MS. F HERTY: Oh, Your Honor, I move to admit this into evidence.
THE COURT: Granted. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 391.)
MS. F HERTY: Thank you.
Q Turning to the first page, do you see that this is on letterhead "Donald J. Trump 725 Fifth venue, New York, New York 10022"?
Yes.
Q That's the address of the Trump Organization?
Yes.
Q The date on this certification, this is dated March 13, 2017, yes?
Correct.
Q Okay. I'll draw your attention to point one in this certification. Sorry. I'll just frame your reference, the very, very top, it says, "There is a lender Deutsche Bank Trust Company of mericas." You're familiar with Deutsche Bank Trust Company as a lender to the Trump Organization?
Yes.
Q You'll see that there is an entry for a guarantor.

That's Donald J. Trump, yes?
Correct.
Q nd the borrower identified in the certification is Trump Endeavor 12, LLC. You see that there?
I do.
Q nd you're familiar with Trump Endeavor 12, LLC, correct?
I believe so, yes.
Q Sorry?
I believe so, yes.
Q Turning to point one, "financial information," it says, "The underlined guarantor hereby certifies to lender as of the date hereof that as of June 30, 2016 (the "reporting date") one, financial information. s applicable (please check the applicable box below and insert the applicable date below)."
You'll see the very first bullet is "X"-ed. " ttached hereto is guarantor's Statement of Financial Condition as of June 30, 2016 (Section 11( ) of the guaranty)" and then there are two other bullets of financial information checked, right?
Yes.
Q Then it states, "The foregoing presents fairly in all material respects the financial condition of the guarantor at the period presented," right?
Yes.
Q Did you take any steps to assure yourself of this

certification?
s with all of the certifications, as I think we discussed yesterday, I would have sat with the relevant parties; namely, in accounting, whether that's the Trump team and/or Donald Bender. I would have asked them if everything that is in here is correct. I would have likely also checked with our legal department to make sure that the conditions are met as it relates to anything I would sign for Deutsche Bank and if they assured me in their expert opinion that these things were fine, I would have been fine with that and signed off accordingly.
Q Is that specific to this particular certification, sir?
Well, I think I probably would save us some time and say that's probably specific to all of these certifications because I'm sure I've signed dozens of these in my time as a trustee.
Q So no specific recollection as to this particular certification, right?
Correct.
Q You're providing me your general recollection as to what you would do, correct?
Correct. I'm providing you the process I would have gone through. I would have relied on the people who are the experts in compiling all of this who deal with these things down to the very granular levels. If they're telling me it is okay and then legal tells me, it goes through the appropriate

processes for whatever it may be, you know. I would be comfortable trusting my team both inside and outside that this is fine for me to sign.
Q nd did the legal department indeed confirm it was okay to sign the certification?
I don't recall specifically, but that would have generally been my process.
Q Do you have any specific recollection that the legal department informed you it was not okay to sign a certification?
No, because I would not have signed it had they done that.
Q side from those conversations you had with the accounting department, with Mr. Bender and with Mr. Legal -- with the legal department?
Mr. Legal doesn't work at the Trump Organization anymore. He's out of state. It may be hard to subpoena him.
Q They're all out of state. Okay.
side from those conversations, did you yourself specifically take any steps to assure yourself of the information you were certifying in this certification?
Well, I mean, I would think speaking to them -- I may have spoken to individuals if there was details that I don't recall right now. I may have taken it further down the line, but I think if the people who are running the numbers on each and every one of the things that would be an aspect of this or

are telling me that this is okay, I'd probably would have been fine with it, but I don't recall specifically having conversations about, you know, an individual or an anomaly or whatever it may be.
Q Specifically as it relates to this certification, which documents did you review?
I don't recall this specific certification, so I couldn't tell you.
Q Other than what you just testified generally, no specific knowledge to share about what you did to assure yourself of the certification here?
Correct. No, I don't recall that.
Q When you signed this certification, you intended for the bank to rely upon it, correct?
Sure.
Q You could put that down, sir.
MS. F HERTY: Your Honor, I'm going to turn to a document already in evidence. We discussed it yesterday briefly. It is identified as PX-755.
Q Do you see that document in front of you, Mr. Trump?
I do.
Q We discussed this yesterday. m I correct you don't have any specific familiarity with the 2017 Statement of Financial Condition of Donald Trump, right?
Correct.

Q If I asked you the same question as I did about 2016, we can turn to page two confirming that it is, in fact, the trustees responsible for the Statements of Financial Condition in 2017, it states that there, correct?
Correct.
Q nd this independent accountant's report was finalized, at the bottom of this letter you can see, October 30, 2017. You see that?
I do.
Q You were a trustee, correct?
Yes.
Q nd if I asked you the same questions I asked before about what you specifically did to prepare this document, you have no specific knowledge about that, right?
Correct. It would be the same for all of the Statements of Financial Condition.
Q So if I showed you the 2018 Statement of Financial Condition, same answer?
I think we could save each other a lot of time and effort and yes, it would be the same thing.
Q If I showed you the 2019 Statement of Financial Condition, it would be the same answer?
Yes, ma'am.
Q nd if I showed you the 2020 Statement of Financial Condition, it would be the same answer?

I believe that's correct.
Q I may show you the 2021 Statement of Financial Condition. Do you have any knowledge that you retained a different accounting firm to commission the Statement of Financial Condition in 2021?
Yes, I'm aware of that.
Q Who was that accounting firm?
That's Whitley Penn.
Q Did you work specifically on the 2021 Statement of Financial Condition with Whitley Penn?
If I did, it would have been in the same manner that I would have with Mazars.
Q No specific knowledge as to the work you performed on the 2021 Statement of Financial Condition with Whitley Penn; is that true?
That's accurate, yes.
MS. F HERTY: nd I'll just put it on the screen. We can expedite, your Honor. I'm putting up a document already in evidence.
Q gain, Mr. Trump, it is a spreadsheet, so it is rather large. Nothing to hand up. It is PX 758.
The title on this document is, "The Donald J. Trump Statement of Financial Condition as of June 30, 2017." This is the supporting data spreadsheet.
Similar to 2016, no specific knowledge as to the

supporting data spreadsheet created for the 2017 Statement of Financial Condition, correct?
Correct.
Q nd if I asked you questions about the specific work you did on this particular spreadsheet, no specific knowledge of that work, correct?
Correct.
Q nd if I asked you the same question if I put up the 2018 supporting data spreadsheet for the 2018 Statement of Financial Condition, would your answer still be the same?
I believe it would, yes.
Q No specific knowledge as to the spreadsheet, correct?
Correct.
Q No specific knowledge as to work you performed on the supporting data spreadsheet, correct?
Correct.
Q nd if I asked those same questions for 2019, would your answers remain the same?
Rinse and repeat, yes.
Q If I asked you the same questions for 2020, would your answers remain the same?
I believe they would, yes.
Q nd in 2021, if I asked you those same questions for work you performed on supporting data spreadsheet for the 2021 Statement of Financial Condition, would your answer still be the

same?
I believe so.
MS. F HERTY: Your Honor, I'm going to show to the witness a document that I don't know has formally been moved into evidence, but may have been and not recorded. It is Plaintiff's Exhibit P X-754. We've discussed it before. I believe Tommy has it, but in case it has not been formally moved into evidence, I would so move.
THE COURT: Granted. It is in evidence.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 754.)
MS. F HERTY: Thank you, your Honor.
Q nd Mr. Trump, I'll turn your attention to the third page of this document. You recognize that is your signature, correct?
I do.
Q You recognize this as the 2017 representation letter to Mazars?
Yes, it would appear so.
Q Dated October 30, 2017?
Yes.
Q nd before, I asked you a series of questions on the 2016 representation letter to Mazars.
Do you recall those questions that I asked you?
Yes.

Q nd you gave me answers as to the assurances that the Trump Organization made to Mazars contained in this representation letter.

Do you recall that testimony you provided?

I do, yes.

Q nd we went over a series of the representations contained in the representation letter and the numbered paragraphs contained within the rep letter.

Do you recall those questions about those numbered paragraphs?

I do.

Q nd if I went through a similar exercise to ask you those same questions about those same representations, would you still give me the same answer?

I can't think of anything off the top of my head that would change that, so yes.

(Continued on the next page.)

Q So no specific testimony you could provide that would distinguish the assurances you made for yourself to sign the 2017 representation letter to Mazars; correct?

Correct. Not that I can recall anything different, yes.

MS. F HERTY: Your Honor, I'm going to put up a document that's already been admitted into evidence. It is a big document, PX 1386. It's a family that Mr. Solomon moved in earlier in the trial.

This may take me a few weeks to read.

Q Mr. Trump, I've handed you a document. It's a family compilation document. I'll draw your attention on the screen, which may be easier, but the first page I'll draw your attention to is at -- you'll see at the very bottom there is a page two of number, so page 2 of 230. It's also on the screen. You'll see that --

Page one.

Q Page two?

Yes, okay.

Q See at the very bottom?

Yes, exactly.

Q Okay. This is another certification to Deutsche Bank; correct?

It would appear so, yes.

Q On behalf of the borrower Trump Old Post Office LLC?

Yes.

Q Dated October 31, 2017?

Correct.

Q nd, again, this has similar language to what we saw earlier in the prior certification that "the undersigned guarantor certifies to the lender as of the date hereof that as of June 30, 2017 the reporting date, point one, that you are providing certain financial information;" right?

Correct.

Q nd attached there is a guarantor's Statement of Financial Condition as of June 30, 2017. You see that there?

I do.

Q nd the certification states "the foregoing presents fairly in all material respects the financial condition of guarantor at the period presented;" correct?

Correct.

Q nd if we turn to page three of 230.

On this document you recognize that as your signature; right?

I do.

Q nd if I asked you the same questions I asked you about the earlier certification about what steps you took to assure yourself of this certification your answer would remain the same as it relates to this specific document; correct?

It would.

Q Okay. If you turn to page five of 230.

Yes.

Q Dated October 31, 2017, another certification to Deutsche Bank on behalf of Trump Endeavor 12 LLC. You see that there?

I do.

Q gain, another certification for the financial information; right?

Yes, ma'am.

Q ttaching the Statement of Financial Condition; correct?

Yes.

Q If you turn to the following page.

gain, that is your certification -- your signature for this certification; correct?

Correct.

Q If I asked you those same questions your answer would still be the same specifically as it relates to this document?

I believe so, yes.

Q Correct that you signed this certification with the intent that the bank would rely on it?

I don't know that they rely on it. I don't -- I know a lot of bankers and they do their own due diligence, but I was fine signing this based on everything I had been told as per everything we've discussed today, yes.

Q I'll re-ask my question.
You signed this certification intending that the bank would rely on it; correct?
I'm fine with the bank relying on it, yes.
Q nd the prior certification I did not ask that question, but same question. You signed that prior certification with the intent that the bank would rely on it?
gain, I would be fine with them relying on it. I don't know what their intent is.
Q Did you intend for the bank to rely on that certification that you signed?
I don't know. gain, I think -- I know -- like I said, I know a lot of bankers that do their own due diligence. If they looked at it and that was their -- and if they relied on it, I would be fine with all of the material information that's in those documents.
THE COURT: That doesn't answer the question and the intent isn't the banker's. It's your intent that she is asking about; correct?
MS. F HERTY: Correct.
Then I'm not sure I understand. I'm fine with the bank relying on that information.
Q So is that a question you intended for the bank to rely on your certification?
I don't know that I intended for them to do anything.

I'm fine signing off on it. It's not as simple as yes or no to me.
THE COURT: I'm not going to insist on a yes-or-no answer.
MS. F HERTY: I think that's as best as he's going to give.
ll right. Your Honor, I'm going to put on the screen a document that's already in evidence. It is identified as PX 3285.
Q Mr. Trump, keep that exhibit near you. I'm going to ask questions about it again.
Sure.
Q Okay. I'll turn your attention to the second page, but I'll just draw your attention to the first page.
The subject of this e-mail, which has an attachment, is "Ferry Point 2018 No M C change letter."
You're familiar with Ferry Point; right?
I am.
Q nd the attachment is a 2017 No M C letter.
Do you know what a No M C letter is?
I don't.
Q Let's turn to the second page and see if we can figure that out. Do you see the date on this document, pril 22, 2017?
I do.
Q ddressed to the City of New York Department of Parks

and Recreation; yes?
Yes.
Q When the "re:" lines says "President Donald J. Trump?"
Yes.
Q Turning to the bottom of this letter do you recognize your name included as the cc?
I do.
Q nd this letter was sent by Mazars; correct?
It would appear so.
Q Okay. Drawing your attention to the second paragraph, it states: "While we have not reviewed computations of value since the aforementioned June 30, 2016 financial statement, based on discussions with trustees of Donald J. Trump Revocable Trust dated pril 7, 2014, as amended and their advisors, we are not aware of any matters that would indicate a significant change in Mr. Trump's net worth as of this date."
You see that language there?
I do.
Q What discussions did you have regarding the substance of this paragraph?
I don't recall any.
MS. F HERTY: Your Honor, I'm going to move faster. I'm going to hand up to the witness a document identified -- marked for identification as PX 393.
Q This is another bank certification on Trump

Organization letterhead for Donald J. Trump; yes?
Correct.
Q Turning to the second page of this document, do you recognize that as your signature?
I do.
Q nd then if you turn to the fourth page of this document, do you recognize your signature again on another certification?
I do.
Q nd then if you turn to the sixth page of this document, do you recognize your signature again?
I do.
MS. F HERTY: Your Honor, I move to admit this packet of certifications into evidence.
THE COURT: Granted. It's in or they're in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 393 in evidence.)
Q nd Mr. Trump, you see that this packet is a very similar packet of certifications sent to Deutsche Bank. The first is on behalf of Trump Old Post that's on page one of six. Do you see that there?
Yes, ma'am.
Q nd it -- this document contains similar language about the certification that we've seen in the prior bank

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certifications; right?
Correct.
Q nd the second certification, that certification was signed by you in 2018 on behalf of you, Trump Endeavor 12 LLC, to Deutsche Bank; yes?
Correct.
Q nd the third certification we saw signed on October 25, 2018 was certifying to Deutsche Bank on behalf of 401 North Wabash? Is it Wabash or Wabash?
Wabash.
Q Thank you.
401 North Wabash Venture LLC; correct?
Correct.
Q nd if I asked you the same questions that I asked you about the prior bank certifications would your answers remain the same?
Yes, ma'am.
Q gain, you intended for the bank to rely on the certifications when you signed them?
I'm fine with them relying on it, yes.
Q Thank you.
MS. F HERTY: Your Honor, I would just like to show another Mazars rep letter, which I'm not sure has formally been moved into evidence. So I believe Tommy has it. It's PX 841.

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Q ll right. You see that this is another representation letter drafted by the Trump Organization issued to Mazars dated October 31, 2019; correct?
Correct.
Q nd on page three of this document that is your signature; right?
Yes.
MS. F HERTY: Your Honor, I move to admit this formally into evidence if it was not previously admitted.
THE COURT: Granted.
MS. F HERTY: Thank you.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 841 in evidence.)
Q If I asked you the same questions you have provided -- you would provide me the same answers as we discussed earlier with regards to the representation letters, Mr. Trump?
I believe so, yes. I can't think of anything off the top of my head that changed.
Q Thank you. You can put that down.
Just so that we could turn back to it, I had you hold near you PX 1386, and I'll draw your attention to page 100 of 230. I told you it's voluminous.
It's a big one.
Q It's a big one.

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nd it's on the screen, Mr. Trump, if that helps.
Yes.
Q Okay. Do you recognize that signature when shley scrolls up to it?
I do.
Q That's your signature?
Yes.
Q nd if you turn to the page prior this is a certification issued to Deutsche Bank on behalf of the guarantor Donald J. Trump and the borrower is 401 North Wabash Venture LLC dated October 31, 2019; right?
I believe so, yes.
Q nother certification that you signed; yes?
Yes.
Q nd then if we turn to page 101 of 230, still October 31, 2019, another certification. This one on behalf of Trump Endeavor 12 LLC; correct?
Yes.
Q The following page, that is in fact your signature; right?
Yes.
Q nd then the following page this is the third certification again dated October 31, 2019, this time on behalf of Trump Old Post Office LLC; right?
Yes.

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Q Same certifications as the prior certifications attaching the Statement of Financial Condition of the respective year; correct?
I believe so, yes.
Q nd the following page that is in fact your signature certifying; correct?
Yes.
Q nd if I asked you the same questions that I had previously asked you as to those bank certifications any specific difference as it pertains to these particular certifications in 2019?
None that I can recall, no.
Q One second, Mr. Trump. I apologize.
No problem.
MS. F HERTY: I'm just going to show the witness PX 1354 and confirm it was already admitted into evidence. This is the 2021 Statement of Financial Condition for Mr. Donald J. Trump. If we could turn to the second page.
Q In this particular year, correct that the Statement of Financial Condition was compiled by the Whitley Penn accounting firm; yes?
I believe that's correct, yes.
Q If we turn to the next page of the Independent ccountants' Compilation Report. It is dated October 29, 2021; correct?

Yes.
Q You were still trustee at this time; yes?
Correct.
Q If we turn back to the first line -- first --
MS. F HERTY: Yes, that page, shley. Thank you.
Q Says "the trustee of the Donald J. Trump Revocable Trust?"
Yes.
Q " re responsible for the accompanying personal financial statement;" yes?
Yes.
Q Okay. nd again, the rest of the questions that I asked as to statements of financial condition as it pertains to this particular Statement of Financial Condition, no specific response that is different than any of your other responses related to the statements of financial condition?
This was Whitley Penn, but no. Other than that, I can't think of anything different.
Q Thank you.
THE COURT: "Thank you" is okay. It's polite. Not "great," not, you know, "terrific." "Okay" I rather you left it out, probably easier on the reporter. It might show some sort of confirmation.
MS. F HERTY: I'm confirming for myself, Judge. I got it. Thank you, Your Honor.

THE COURT: Thank you is okay.
Q ll right. I'm going to put up the JSD, Plaintiff's Exhibit 1501. It is a spreadsheet in support of the 2021 Statement of Financial Condition.
No specific recollection of this particular document; right, Mr. Trump?
Not that I recall, correct.
Q nd if I asked you the same questions that I asked you about the other prior supporting data spreadsheets for the Statement of Financial Condition as it specifically pertains to the 2021 supporting data spreadsheet, same response?
I believe so, yes.
MS. F HERTY: Tommy, if we could get PX 1502.
Q Turn your attention to the third page of this document. You recognize that signature as your signature?
Yes, ma'am.
Q s the trustee of the Donald J. Trump Revocable Trust?
Correct.
Q Dated October 29, 2021?
Correct.
Q Turning to the first page, this is a representation letter this time addressed to Whitley Penn LLP; correct?
Correct.
Q Dated October 29, 2021?
Correct.

Q You'll see that similar to the Mazars representation letter there are certain assurances contained within this representation letter; yes?
Yes.
Q nd, again, similar to the Mazars letter you'll see that there are assurances in numbered paragraphs. You'll see that there is number one at the top of your screen and it numbers two through five fill out the bottom of this first page. Do you see those assurances?
I do.
Q nd then it continues on to page two. There are a total of 22 numbered paragraphs of assurances provided to Whitley Penn; correct?
Yes.
Q nd if I asked you the same questions I did -- as I previously did as to the assurances you made to be able to sign this representation letter to Whitley Penn would your answer remain the same as it specifically relates to Whitley Penn, this document in front of you?
I believe so. I can't think of anything that changed off the top of my head.
Q Okay. Mr. Trump, I'm going to put a document on the screen already in evidence. It is identified as PX 134, and I will draw your attention to page six of eight.
Yes.

Q It says, " greed client Trump Briarcliff Manor Development LLC" and then there is a signature. Do you recognize that signature as yours?
I do.
Q re you familiar with this particular representation letter -- engagement letter with Cushman & Wakefield?
No, not to my recollection.
Q re you familiar with Cushman & Wakefield, though; right?
I am, yes.
Q re you aware of the purpose of the appraisal identified in this engagement letter?
I'd have to read it, but I don't recall seeing this one before, so not off the top of my head, no.
Q I'll draw your attention to the first page. It is dated June 3, 2015 addressed to Mr. Eric Trump, your brother; correct?
Correct.
Q t Trump Briarcliff Manor Development LLC; right?
Correct.
Q re you familiar with Trump Briarcliff Manor Development LLC?
Generally speaking, yes.
Q nd it says, "re: conservation easement on parcel owned by Trump Briarcliff Manor Development LLC." Do you see that?

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I do.
Q Does that refresh your recollection as to the purpose of this particular engagement?
It was made out to my brother. I think you'd have to ask him.
Q You signed it; correct?
Correct.
Q re you aware that there was a potential conservation easement being appraised for the Briarcliff property?
I recall it vaguely now, but I don't remember the specifics.
Q Then why are you signing this document?
Because I signed it as an EVP of the organization. I imagine my brother could have signed it as well if it came to me, but it was his project. He would work on it and he would know the details.
MS. F HERTY: This is a big one. It is not yet in evidence, Your Honor.
Your Honor, I've handed to the witness a document that's been marked for identification as PX-3306.
Q Mr. Trump, I'm not going to ask you to go through the whole thing.
I appreciate that greatly. Thank you.
Q Plenty of reading for the week.
I'll just draw your attention to page 34 of 381, so

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look at the bottom. It says 34 of 381. nd tell me if you recognize that signature there?
That's my signature.
Q Okay. On behalf of Trump Ferry Point LLC; correct?
Correct.
Q Your title is the president?
Correct.
Q nd this is the agreement of purchase and sale and escrow instructions with regards to the Trump Golf Links at Ferry Point Park?
Correct.
Q There was a transaction to sell this to Bally's; correct?
Correct.
Q This transaction did in fact close; right?
Yes.
MS. F HERTY: Your Honor, I move to admit PX 3306 into evidence.
MR. ROBERT: Objection.
THE COURT: Ground.
MR. ROBERT: Relevance of a 2023 transaction. There is no allegation of anything improper about a 2023 transaction. It's not part of their case.
THE COURT: nd what would the relevance be, if any?

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MS. F HERTY: I believe Ferry Point is relevant to the disgorgement allegations we have here, Your Honor. That sale is available for disgorgement.
MR. ROBERT: The procurement of this contract was well before the statute of limitations even started and now we have a transaction that closed a few months ago. It's completely and utterly irrelevant, Your Honor.
THE COURT: How would that fit into the disgorgement claim?
MS. F HERTY: The sale -- as we've already seen and as this witness in particular testified, there were No M C letters relying upon the statements of financial condition sent into the Ferry Point -- to the Parks Department. That information was --
THE COURT: Hold it. The objection overruled and there is no jury, so no prejudice. Even if it becomes irrelevant, even if it turns out it's irrelevant. It's in evidence.
MS. F HERTY: Thank you, Your Honor.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3306 in evidence.)
Q Did I hand up to you the next exhibit, PX 3304, sir?
Yes.
Q So this is a document on Trump Ferry Point LLC

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letterhead; yes?
Yes.
Q Dated June 26, 2023?
Correct.
Q This is the "re:" line says: " greement of purchase and sale and escrow instructions dated as of the date hereof, the PS , by and between Trump Ferry Point LLC or (Trump) and Bally's Corporation or (Bally's) in connection with the property known as Trump Golf Links at Ferry Point Park." Do you see that there?
I do.
Q nd turning to page three of four, do you recognize that as your signature, sir?
I do.
MS. F HERTY: Your Honor, I move to admit this document into evidence.
MR. ROBERT: Same objection, Your Honor, and a continuing objection to this line of questioning.
MR. KISE: Your Honor, let me just see if I understand. I'm little lost as to how this relates to disgorgement. Based on what Mr. Robert said it predates the statute of limitations, the close of the contract and then the -- this transaction postdates the allegations in the complaint. Is it the government's intention to assert that a property that was a landfill that the Trump family took

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and pumped tens of millions of dollars into and converted into a world class facility is now subject to disgorgement?

THE COURT: Well, I think that No M C letters those were during the -- within the statute of limitations period.

MR. KISE: No M C letters were within the statute of limitations period, but the evidence has already established that was after they already spent tens of millions of dollars to renovate the facility.

THE COURT: Objection overruled. Let's move along.

MS. F HERTY: Thank you, Your Honor.

Q How much have you made in this transaction, Mr. Trump?

MR. ROBERT: Objection to "who."

THE COURT: Okay. How much did you make, I think?

MS. F HERTY: Well, he did sign this as president of Trump Ferry Point LLC. I think it's a fair question to ask this witness who has signed these executed documents how much --

THE COURT: I think it's fair to assume that he was acting on behalf of the corporation, but --

I didn't make anything.

THE COURT: Different question, perhaps?

Q How much did Trump Ferry Point LLC make from this transaction?

Well, the sales price is $16 million, but we obviously have, you know, lots of costs and other things, you know, in the

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deal that we have been funding and working on for years, so I don't know the exact net number for profit.

MS. F HERTY: Your Honor, I'm handing up to the witness one additional document identified as PX-3305 not yet in evidence.

Q Mr. Trump, would you agree with me that the license agreement is consistent with the transaction papers that we just reviewed and it was -- that license agreement was in fact assigned to the Bally's Corporation?

I'd have to -- let me read the letter because I don't know this -- I don't have any recollection of this letter.

MS. F HERTY: nd, Your Honor, I just want to correct something. I think the transcription may have stated "16 million" with regards to the sales price of Trump Ferry Point.

Q Mr. Trump, did you say 16 or 60, 6-0?

60, 60.

Q Thank you, Mr. Trump.

THE COURT: ll right. That's what I heard, so make sure the record indicates 60, however you do that.

I'm sorry, what was the question again, ma'am?

Q I asked you if you'd agree with me that the license agreement was in fact assigned to Bally's Corporation?

I believe so, yes.

Q Okay. nd that's Ron Leiberman. He works for the

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Trump Organization; correct?

Correct.

MS. F HERTY: Your Honor, I move to admit.

MR. ROBERT: Same objection, Your Honor.

THE COURT: Same ruling. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3305 in evidence.)

Q You could put that down, Mr. Trump. Thank you.

MS. F HERTY: One second, Your Honor.

THE COURT: Sure.

MS. F HERTY: Thank you.

Q Mr. Trump, can you hear me?

THE COURT: Can you hear me? I think now.

MS. F HERTY: Thank you.

THE COURT: Yes.

Q Mr. Trump, what, if any, role did you have with regards to the insurance program for the Trump Organization?

Not much of a role.

Q Do you recall in January of 2017 signing an indemnity agreement to Zurich for purposes of the surety program as a result of Donald J. Trump's departure to work in Washington?

No, I don't.

Q No specific recollection of that?

No.

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MS. F HERTY: Your Honor, I'm handing to the witness a document I've marked for identification as PX-1534.

Q nd I'll draw your attention to page three of six, Mr. Trump.

Yes.

Q Do you recognize that signature on the top line under DJT Holdings LLC?

Yes.

Q You recognize that as your signature?

I do.

Q nd that's as Donald Trump, Jr., President?

Yes.

Transcript continues on the following page....

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Q Just turning to the first page, can you confirm for me that this is a rider dated as of January 17, 2017, correct?
Yes.
MS. F HERTY: Your Honor, I move to admit this document in evidence.
THE COURT: Granted. It is in.
MS. F HERTY: Thank you.
(Whereupon, the Document was marked in evidence as Plaintiffs Exhibit 1386.)
MS. F HERTY: We can take that down. Thank you, shley.
Q Mr. Trump, is it a fair statement that throughout your time working at the Trump Organization between 2011 to present, you have been kept generally apprised of the operating financials of the organization?
I would think so, yes.
MS. F HERTY: Your Honor, I'm handing to the witness a document I've marked for identification as PX 1454.
Q This is a memo to you and Eric Trump, right?
Yes.
Q From llen Weisselberg?
Yes.
Q Do you recall you previously testified that this was a document you were provided by Mr. Weisselberg on a regular

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basis?
I don't recall that, but if I said it, I imagine that's accurate.
Q Okay. nd do you recall that this information you previously testified or a similar memo to, it was provided also while Ivanka was still employed at the organization?
I believe so, yes.
Q You don't have any specific recollection as to when you began receiving this information, correct?
No.
Q m I reading this correctly? The subject of this memo is "re: 2017 corporate modified cash flow projection versus actual."
Yes.
Q nd contained in this document are a few categories, for example, there is a box in the middle of the screen or if you're just looking at the page, it is at the top third of the page. That first box says, "business entities"?
Yes.
Q nd there's information related to that box "business entities," correct.
Correct.
Q nd then if you scroll a little further down, there's another box, this one is a white box, and it says, "non-business entities," right?

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Yes.
Q There's information related to that box under the non-business entities, yes?
Correct.
Q nd the memo is dated February 14, 2018. However, am I reading it correctly? This is a reflection of the 2017 year, yes?
It would appear so.
Q nd again am I reading it correctly? s of the 2017 actuals, the adjusted net cash flow/operating profit for 2017 was $2,211,038, so roughly 2.2 million?
Yes.
Q nd that's despite the projected six million figure -- 60 million figure?
It appears so, yes.
Q nd this memo, it states at the very top, " s per your request."
Do you recall why you requested this?
I don't believe I did. I recall, you know, probably years prior to that I think we had asked for it. One of the three of us, meaning myself, my brother and my sister, had asked and then it sort of became, whether it is an annual or a semi-annual thing from llen Weisselberg, but no, I don't recall a specific request as it relates to this document at this time.
MS. F HERTY: Your Honor, I move to admit this

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document into evidence.
THE COURT: Your microphone is not working.
MS. F HERTY: Your Honor, it is dead.
THE COURT: Bring it back to life. ll right. Let's -- we'll take our break now because it may take a while to fix.
MS. F HERTY: I move to admit it.
THE COURT: Granted. I could hear that.
MS. F HERTY: Thank you.
THE COURT: It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1454.)
THE COURT: Let's all come back in 15 minutes.
MS. F HERTY: Thank you.
(Witness exits the stand.)
(Whereupon, a recess was taken.)
THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.
THE COURT: For an administrative reason, we are going to break at 12:45. Let's continue with the direct examination.
MS. F HERTY: Thank you, Your Honor.
Q Mr. Trump, when did you learn about the ttorney General's investigation in the accuracy of the Statements of Financial Condition?

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I don't specifically recall.
Q You did at some point learn about the investigation?
I imagine so, yes.
Q When you learned about the investigation, did you in particular undertake any internal inquiry into the accuracy of the Statements of Financial Condition?
MR. ROBERT: Objection, Your Honor. To the extent that this would call upon the witness to discuss anything that was discussed with myself or any other counsel for him individually, a co-defendant or the Trump Organization, I'm going to instruct him not to answer that.
THE COURT: ll right. We'll see what the individual questions are.
MR. ROBERT: Thank you, Your Honor.
MS. F HERTY: There is still a question pending, Your Honor.
THE COURT: Oh.
I imagine I would have spoken with counsel, correct.
THE COURT: Did you speak with any non-counsel?
Q Other than speaking with counsel, did you speak with anyone?
I don't even recall necessarily speaking with counsel. Though, I'm sure I would have.
Q Did you direct others at the company to undertake -- do not tell me about any specific discussions with

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counsel. I'll give you that as my preface.
Did you direct others at the company to undertake any inquiry into the accuracy of the Statements of Financial Condition?
gain, anything would have been done through counsel.
Q Is that a no?
I don't recall specifically, but anything would have been done through counsel, therefore, privileged.
Q Did anyone, to your knowledge, review the work performed by llen Weisselberg on the Statements of Financial Condition?
MR. ROBERT: t what point in time?
Q fter you learned about the New York ttorney General's investigation.
MR. ROBERT: Outside of any involvement with counsel, I presume.
THE COURT: Yes. Yes, but at any point in time.
I don't specifically recall.
Q Still focusing on the same time frame, did anyone review the work performed by Jeffrey McConney on the Statements of Financial Condition?
Same answer.
Q Have you, Mr. Trump, formed any view about whether Mr. Weisselberg or Mr. McConney performed their work on the Statements of Financial Condition in an appropriate manner from

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2014 through 2021?
I actually think the things are materially correct.
Q So is it fair to say that they performed their work as you expected and the "they" I'm referring to are Mr.'s McConney and Weisselberg?
What's the timeframe?
Q Same timeframe.
Can you give me the dates again?
Q 2014 to 2021.
Yes, I believe so. nd, you know, again, they worked in conjunction with Donald Bender who candidly during that period of time since I was doing a lot of international deals probably spent more time in our offices than I did and so between them, I do believe that's still, again, materially accurate.
Q re you aware of any instances between 2014 and 2021 where either Mr. Weisselberg or Mr. McConney failed to follow any instructions from you in their work on the Statements of Financial Condition?
MR. ROBERT: Objection. The witness said he was not involved in the Statement of Financial Condition, so he wouldn't have been giving them instructions on the Statement of Financial Condition.
THE COURT: Can I get a readback of the question?
(Whereupon, the requested portion of the record was

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read back.)
THE COURT: nd the objection is what, that he testified he had nothing to do with the Statements of Financial Condition?
MR. ROBERT: Yes, Your Honor.
THE COURT: Mr. Trump, did you have anything to do with the Statements of Financial Condition?
THE WITNESS: No, I did not, Your Honor.
THE COURT: Okay. Thank you.
Q Have you undertaken any changes to the policies and procedures of the Trump Organization as a result of the ttorney General's investigation? nd please do not provide me any discussions with counsel.
MR. KISE: Objection. It would also go to, in addition to attorney-client privilege, which I know she's not asking, to the subsequent remedial measures discussion we had previously. I don't remember with which witness.
THE COURT: We're familiar with the subsequent remedial measures point. Is there a way around that or not?
THE WITNESS: I think I can thread the needle. There have been policy changes that have been made. Those have been done through counsel, so I can't get into the details of that. But yes, there are, you know, prior policies and methodologies have certainly been bolstered.
Q Sorry. Which specific policies?

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gain, I don't want to get into the details because these things and structures were done with counsel, but Mark Hawthorn who is now in the similar CFO position is an actual CP , et cetera, et cetera. So there are things I just -- I got to be careful where I go without getting into things that have been structured by legal counsel.

MR. W LL CE: I think to the extent there are changes in how they perform, that is not advice of counsel. You cannot change from a CP to -- from a non-CP to a CP /CFO and claim "I can't talk about that because this is privileged." So if there are changes to policies, he's free to talk about that, not about conversations he had with counsel that led to the changes.

MR. ROBERT: That would still go to a subsequent remedial measure taken in light of a governmental investigation. It would be something the witness would not be required to have to testify about.

MR. W LL CE: I would just make two points on the subsequent remedial measures. subsequent remedial measure undertaken as an obligation of law is actually admissible as to liability. The second point is that this inquiry can go to something more than just liability. It is still relevant to any injunctive relief the Court may choose to fashion in order to if there are policies or procedures at the Trump Organization that need to be changed as a result of this

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case. So even if it doesn't go to liability, it is still relevant to any relief --

THE COURT: Remedy.

MR. ROBERT: I would respectfully disagree with that. The concept of a subsequent remedial measure is to encourage parties to change their practices in light of when something comes to light without fear that the changing of those processes are then going to be used in any way and the witness be required to testify about it.

To Mr. Wallace's second point, that's why there is a monitor there right now. So this is something I would respectfully suggest to the Court the witness not be required to have to answer. Certainly, we can all agree the issues that we dealt with with counsel are off limits. Now, we are talking to the second bucket which may be what, if any, subsequent remedial measures were taken without the assistance of counsel, but my objection still stands.

MR. KISE: One other thing I just want to recite. The Dominos case which was the case that involved this very circumstance and what the court said there about actions taken in response to a government investigation. That's the only case we could find. I believe I cited that case to Your Honor the last time we had this issue arise on subsequent remedial measures.

So actions taken in response to an investigation by

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the ttorney General or response to an investigation by law enforcement would fall squarely within the subsequent remedial measures category even though most of the time it comes up as -- I believe we had this colloquy before. It comes up in the context of personal injury actions and medical/malpractice actions and things like that, but the rule would, nonetheless, apply here.

MR. W LL CE: I would add it is not a privilege. It merely prohibits the changes in procedures and being used as evidence of negligence or liability, but it is a fact that the Court can consider as it is fashioning a remedy as to what might happen in the future and who needs to be responsible for those changes.

MR. KISE: If the inquiry -- two things on that. First of all, there are no Statements of Financial Condition being prepared anymore. So that dispenses with a large measure of the issue about subsequent remedial measures because it is not happening.

But separately from that, what Mr. Wallace is talking about is if in response to the inquiry we take a specific action, that's one thing. If the government intends to ask questions about what exactly it is we're doing now, just not in response to any particular inquiry, but they had Mark Hawthorn on the stand. Mr. Hawthorn is a CP . If they ask, "How do you do X, Y, Z accounting? "How

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do you that?" That's a matter entirely different than something done in response to the government's investigation, something done subsequent as a remedial measure.

If they're going to inquire of witnesses, maybe not this witness, because I don't know that he would know they can ask, but if they're going to inquire about what practices are taking place today, so that the Court can ensure itself that going forward, for example, there aren't going to be any Statements of Financial Condition, or there won't be any issues associated with Statements of Financial Condition, then that's a different line of questioning altogether and that doesn't relate to the question that was asked.

MR. W LL CE: I'll just say if they want to call in Mr. Hawthorn on their case and explain how the processes are working there, they are free to do that. This is the executive vice-president of the company. He and his brother run the company. It is perfectly appropriate for us to ask the persons running the company what they are doing to oversee the financial function of this firm and what they did when they found out that there were allegations of fraud from a government agency.

I don't think what weight Your Honor decides to afford it and how Your Honor decides to use it is not a

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privilege that cannot be discussed in court.
THE COURT: Well, maybe we can compromise. I love compromise. Instead of "What are you doing in response to the ttorney General's investigation," et cetera, how about just "How is the company being run"? But more specifically --
MR. KISE: That's a more appropriate question. That's the heart of exactly what I'm saying.
THE COURT: nd Mr. Kise, I have to give you credit for that idea.
MR. KISE: I've got one. Let's mark this down. Wow. Okay.
THE COURT: Not the first time.
Can we just do that, so there's no taint about subsequent remedial measure? Just you want to know what's going on there now. sk him now what's going on.
Q Since 2020, Mr. Trump, how, if at all, has the Trump Organization changed the operations with regards to the financial practices of the Trump Organization?
MR. KISE: Same objection, Your Honor. It is the same thing.
THE COURT: I was hoping you wouldn't ask how have things changed, but ask specific questions. "Who makes sure this"? "How does this work"?
Q You testified a few moments ago about an individual

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named Mark Hawthorn.
Yes.
Q What is Mr. Hawthorn's title?
Now CFO of the Trump Organization.
Q When did that occur?
I don't remember the exact date.
Q Since 2021?
I imagine so, yes.
Q Why is 2021 the date that you would recall --
It's not. You asked me since 2021. I believe that's the case.
Q Was it before 2021?
Not that I recall.
Q Is there a specific event that you recall occurred in connection with the change of title from Mark Hawthorn to becoming the CFO of the Trump Organization?
I guess llen Weisselberg not being in that position anymore.
MS. F HERTY: Nothing further, Your Honor.
THE COURT: Will there be any cross-examination at this time?
MR. ROBERT: Not at this time, Your Honor.
THE COURT: Okay. Witness is excused.
THE WITNESS: Thank you.
MS. F HERTY: Thank you, Mr. Trump.

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THE WITNESS: Thank you.
(Witness excused.)
MR. ROBERT: For logistical reasons, a couple-minutes break while we bring in the next witness.
THE COURT: Sure. pproximately how long are you thinking?
MR. ROBERT: Two or three minutes. I didn't want you to wait in silence.
THE COURT: You get five.
MR. ROBERT: Thank you, Judge. We'll take five then.
(Whereupon, a recess was taken.)
THE COURT: Plaintiff, would you like it call your next witness?
MR. MER: Yes, Your Honor. The People call Eric Trump. If I could make a quick request as the witness is taking the stand.
THE COURT: Sure. Go ahead.
MR. MER: This is for Mr. Kise. Given the witness, if we are going to have a lengthy evidentiary objection, and I know the Court is prepared to allow that, I would ask that we excuse the witness if that happens.
THE COURT: Okay. I'll keep that in mind.
E R I C T R U M P, a witness called by the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the

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witness stand and testified as follows:
THE COURT OFFICER: State your name and either home or business address for the record.
THE WITNESS: Eric Trump, 115 Eagle Terrace Lane, Jupiter, Florida.
THE COURT: Okay. Please proceed.
MR. MER: Thank you.
DIRECT EX MIN TION
BY MR. MER:
Q Good morning, Mr. Trump. m I correct that you graduated from Georgetown University with a degree in business finance in 2006?
Yes.
Q nd you started to work for your family business a couple of months after graduating from college, right?
I did.
Q nd are you fine to refer to the family business in a very general sense as the Trump Organization?
Yes, I am.
Q nd the Trump Organization is used as a kind of general high level idea as to what the collection of the Trump-related entities are called; is that right?
That's correct.
Q nd that collection of companies likely consists of hundreds of entities, right?

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That's right.
Q When you began at the Trump Organization, am I correct that your job title was something along the lines of project manager?
That's correct.
Q nd at some later point in time you became the executive vice-president or EVP, right?
Yes, that's correct.
Q Do you recall that's sometime before 2014?
That sounds correct.
Q nd during the period of time from when you became an executive vice-president until January of 2017 just prior to your father's inauguration, is it fair to view the Trump Organization hierarchy as a pyramid that had your father at the top?
My father was the owner of the business, yes.
THE COURT: I'll ask the witness to speak very close to the microphone. They're very temperamental. Speak close, directly and loudly.
Q I know you just said your father is the owner of the business, yes. That wasn't my question. My question was is it fair to say that we could view the Trump Organization during that period, the hierarchy at the company as a pyramid with your father on the top?
Yes.

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Q nd during this period that you were EVP up through January 2017, did you report to your father?
Yes.
Q Did you report to anyone else during that period of time other than your father?
I worked with many people, but ultimately reported to my father.
Q nd just again, did you report to anyone else other than your father? I'm not asking whether you worked with them, but just whether you reported to them.
My father would have been my direct report.
Q nd your only direct report, correct?
Yes, that sounds right.
Q nd during this period up again through January 2017, were Donald Trump, Jr. and Ivanka Trump also vie-presidents?
Yes.
Q Were they at the same level in the company hierarchy as you during that period?
Yes.
Q During this period, again, up through January 2017, where in the hierarchy was llen Weisselberg?
He was executive vice-president.
Q So he would have been at the same level as you and your brother and sister, correct?
Yes.

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Q nd where in the hierarchy during this period was Jeffrey McConney?
Jeffrey McConney would have been directly under llen Weisselberg.
Q I know you mentioned Mr. Weisselberg was an executive vice-president. He also had the title of chief financial officer, correct?
That's correct.
Q nd Mr. McConney had the title of controller, right?
That sounds correct, yes.
Q Now, moving to the period from January 2017 to January -- the period between January 2017 and January 2021, during that period when your father had assumed the office of the presidency, is it correct that he no longer sat at the top of the pyramid?
That is correct.
Q nd during the same time period, is it fair to say that you ran the day-to-day operations of the Trump Organization along with Donald J. Trump, Jr. and llen Weisselberg, correct?
Yes, I ran the operations of the Trump Organization.
Q With those two individuals, correct?
That's correct.
Q nd those two individuals, Donald Trump, Jr. and llen Weisselberg, were both trustees of your father's revocable trust during that time period?

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They were the two trustees, yes.
Q During this period, did you have anyone who you reported to?
I did not, no.
Q Subsequent to your father's term ending in January 2021, is it fair to say that he largely relies on you and your brother Donald Trump, Jr. and the other executives of the company to run the business?
Yes, my father relied on me.
Q My question is a little differently.
Let me repeat. My father relied on me and the two trustees to run the business, yes.
Q nd during this post-January 2021 period, is it fair to say that if your father directed you to take some course of action with respect to the Trump Organization, you would follow his directive, right?
I wouldn't sell Mar- -Lago without asking my father, no.
Q I would like my question to be broader if you wouldn't mind.
If my father directed me to take an action post him leaving the presidency, he's the owner of the company, yes, I'd follow his directive.
Q Thank you.
You're familiar with the Seven Springs Estate in

Westchester, correct?
Yes, I am.
Q nd in fact, you lived there during the summers in high school working on the property and learning a lot about life during that time, right?
Some of the best years of my life.
Q Yes.
Yes.
Q nd you had certain responsibilities for the property, correct?
Many years later, yes.
Q Fair to say that starting in 2012, you had some involvement with the property from an operational standpoint?
Starting in 2012, I started to be involved in the property, yes.
MR. MER: Let's go ahead and put up the 2013 Jeff Supporting Data, which is Plaintiff's Exhibit 708 in evidence.
Q We're going to go to Row 633. You'll see that that is the row in this supporting data spreadsheet where Seven Springs starts. Do you see that?
I do. Can you be clear as to what the spreadsheet is?
Q Sure. We've had testimony from Mr. McConney that this is his supporting data spreadsheet that he used to compute values for the Statement of Financial Condition.

Okay.
Q nd Mr. McConney notes in Row 638, you'll see, he says, "6/30/2012, per telephone conversation with Eric Trump September 24, 2012."
Mr. Trump, do you have any recollection of that phone call?
No, I don't.
Q Do you have any reason to believe that Mr. McConney would reference a conversation with you if it didn't happen?
bsolutely not.
Q In fact, people in the company have conversations with you all the time about projects that you're working on and you provide them with answers when you can, correct?
lmost every single day.
(Continued on the next page.)

Q Now, Row 640, Mr. McConney notes a second telephone conversation with you on ugust 20th of 2013.
Do you have any recollection of having a call with him on that date about Seven Springs?
I don't have specific recollection as to a telephone conversation on that date, no.
Q nd again, do you have any reason to believe that Mr. McConney would reference a conversation with you as noted here if it didn't happen?
I do not.
Q Is it the case, Mr. Trump, that as of the dates of these two telephone calls with Mr. McConney that he indicates he had with you, you understood in this time frame that he needed from you information to assist him in valuing Seven Springs for your father's Statement of Financial Condition?
That's incorrect. I never had anything to do with the Statement of Financial Condition.
Q Just to be clear then, is it your testimony that in the time frame of the two calls he notes he had with you you had no knowledge of your father's Statement of Financial Condition. Is that your testimony?
People ask me questions all the time, but I never worked on the Statement of Financial Condition, correct.
Q Well, let's be clear because my question was different than the one you answered.

MR. MER: Can I have a read back?
THE COURT: We can have a read back, but I'll direct the witness like I very often do, if there is a yes-or-no question and you can answer it yes or no, please do so. If you need to explain an answer, then you can and we can go from there.
nd a read back now.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
I don't believe I ever saw or worked on a Statement of Financial Condition. I don't believe I would have had knowledge of it.
Q Is it your testimony then that you had no knowledge in this time frame, that is by September 2012, that your father had a Statement of Financial Condition valuing his assets and showing his net worth?
It's not what I did do for the company, so --
THE COURT: That was classic yes or no and you're not answering yes or no.
You wand a read back?
MR. MER: I'd like a read back, please.
THE COURT: Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Not to the best of my understanding.

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Q nd I just want to nail this down because I appreciate memories fade. Could this be a situation where you were in fact aware back in this time frame that your father had a Statement of Financial Condition and just now don't recall or are you telling us with certainty that in this time frame you were not aware that your father had a Statement of Financial Condition?
I think I was 26 years old at the time. I don't recall what I knew at the time, but as I said, I am unaware of the Statement of Financial Condition. I never worked on it at the time and I didn't know anything about it really until this case came into fruition.
Q nd are you telling us then that in the time frame of these two calls with Mr. McConney in September of 2012 and ugust of 2013 that you had no understanding that Mr. McConney needed information to assist him in valuing Seven Springs for the purpose of your father's Statement of Financial Condition?
I believe that would be correct, yes.
Q Mr. Trump, you're familiar with the golf club owned by the trust in Charlotte, North Carolina; right?
Yes, I am.
Q nd do you recall that the club was purchased in the first half of 2012 by the Trump Organization?
Yes, very familiar.
Q I'm going to hand to you what we're marking as Plaintiff's Exhibit 3329.

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Mr. Trump, you'll see that this is an e-mail exchange between you and someone named Dick Grove. Do you see that?
I do.
Q Do you recall who Mr. Grove is?
Very vaguely, possibly a board member at the club at the time.
Q If you look at the second page of the exhibit you'll see at the very bottom it says "board of directors" and Mr. Grove is listed as one of them, so your recollection is correct. He was a board member, right?
That appears to be correct, yes.
Q nd he's a board member of the Point Lake and Golf Club if you look at the first page which is the memo that's in this e-mail. Do you see that?
Yes, I do.
Q nd do you recall that the Point Lake and Golf Club was the name of the Charlotte club prior to being purchased by the Trump Organization?
I believe that's correct, yes.
Q nd he's forwarding to you an e-mail that he says was sent to members the prior day; right?
I presume that's correct.
Q Well, that's what it says. He says, "Eric, I wanted to confirm that the following e-mail was sent to our members yesterday. Dick;" right?

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That sounds correct, yes.
Q nd he's forwarding you this memo that is entitled "Information on Options and Straw Vote." Do you see that?
Yes, I do.
Q nd just to get the dates if we go to the top this e-mail is being forward to you by Mr. Grove on January 7, 2012; right?
Yes.
MR. MER: Your Honor, I move this be admitted into evidence.
MR. ROBERT: Objection statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3329 in evidence.)
Q Do you remember receiving this e-mail in early January 2012 in connection with the potential purchase by the Trump Organization of the Charlotte club?
I do not.
Q Do you recall that to purchase the club it was necessary to obtain approval through a vote of the club members?
Yes, I do.
Q nd if we look at the second paragraph of the memo he's forwarding to you do you see that the second paragraph describes future ownership options where one of the options is being a

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member-owned club as referenced in the first indented point?
Yes, I do.
Q nd the second option is the sale of the club assets to the Trump Organization. Do you see that?
Yes, I do.
Q nd do you remember that those were the two options?
Yes.
Q nd the last sentence in the paragraph says Trump drafted a few and approved all statements relating to their offer. Do you see that? You can see it on the screen. I've highlighted it.
Yes, I do.
Q You were involved in putting together that offer, isn't that right?
I was involved in negotiation of this deal, yes.
Q Just to be precise because my question asked about putting together the offer. You were involved in putting together the offer that's being referenced here; right?
I don't remember. I was involved in the negotiating of several business points of the deal and some of this vote, but I don't remember if it I was the one that put together the materials for our offer.
Q Would you have been one of the people to have approved all of the statements relating to the offer that was provided by the company to the members of the club?

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It's possible that I would have been one of the people who would have seen them, sure.
Q I didn't say "see." I said "approved."
I guess it depends on what the actual item in the offer was. I imagine there could have been hundreds of developments that went into that, but I mean, if you could be a little more specific I think it would be easier for me to answer the question.
Q Were you one of the key people negotiating this deal on behalf of the Trump Organization?
Yes, I was.
Q Okay. Let's go to the second page of the exhibit and the paragraph beginning in bold, "the straw vote." Do you see that?
I do.
Q Okay. It says that "if the members vote in favor of the Trump plans, the fully negotiated final terms and conditions will be brought back to the members for consideration and a binding vote in February and March. If members vote for a member-owned club, negotiations with Trump will end."
Do you see that?
I do.
Q nd that was your understanding at the time; right?
Yes, we had to get a vote of the members.
Q nd the negotiations did in fact move forward based on

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how the straw poll vote turned out; right?
It was overwhelmingly positive for us, yes.
Q So the negotiations went forward based on how the straw poll vote turned out; correct?
Yes.
Q nd one of the other board members is Philip Delk. Do you see his name in the bottom?
Yes, I do.
Q Do you recall communicating with Mr. Delk about moving forward with the member vote after the straw poll?
I don't, but it's very possible.
Q Do you recall that he was the board member tasked with conducting due diligence on the Trump Organization for purposes of reporting to the club members in advance of the members' vote?
Yes, I believe he was that person.
MR. MER: Let's go ahead and mark as exhibit Plaintiff's 3333.
MR. ROBERT: Your Honor, just for the record I object to the whole line of questioning and have a continuing objection on the statute of limitations and relevance.
THE COURT: I understand that, yes.
Q Mr. Trump, do you see that this is an e-mail to llen Weisselberg cc'd to you and others from Mr. Delk?

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Yes, I do.
Q nd it attaches financial due diligence of the Trump Organization. Do you see that?
I do.
MR. MER: Your Honor, I move to admit this document into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 3333 in evidence.)
Q If you turn to the second page which is the attachment, it's entitled, "Financial Due Diligence of the Trump Organization." Do you see that?
Yes, I do.
Q nd you received this e-mail from Mr. Delk and the attachment; right?
If you tell me I do, yes, I have no reason to not believe that I did.
Q Well, do you have a specific recollection of receiving and reviewing the financial due diligence summary that Mr. Delk attaches to his e-mail?
I have no recollection.
Q If you look at the financial due diligence summary that's attached to his e-mail just going to read to you the

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first paragraph of this. Says, "On February 13, 2012, Phil Delk reviewed a financial statement prepared by a CP firm reflecting Donald Trump's net worth. Can we agree that's a reference to your father's Statement of Financial Condition?
I really don't want to speculate. I could assume, because I don't -- I prefer not to speculate.
Q Well, you were one of the principal people involved in the negotiation of the purchase of this club; right?
Yes.
Q nd you recall Mr. Delk was the board member who was doing the due diligence on the deal; right?
Yes.
Q nd this says he reviewed a financial statement prepared by a CP firm reflecting Donald Trump's net worth.
re you telling us that you are not in a position to understand that this was your father's Statement of Financial Condition?
I'm just saying I don't want to speculate there is a lot of financial statements that are prepared by CP s. It's addressed to clearly not me. It's addressed to somebody else and clearly this is Phil Delk's recollection. I just -- I don't want to confirm or deny either way. I just don't want to speculate.
Q nd I don't want you to speculate either. So that's why my question is very simple.

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re you telling us you are not in a position to recognize the document described here as your father's Statement of Financial Condition? Is that your --

I am not in that position. This is 12 years ago. I have no idea.

Q It continues on. It says the statement was not signed by the CP firm giving an opinion that it accurately reflected Donald Trump's net worth, but that it showed the assets, liabilities for Donald Trump and noted any material omissions. The financial statement reflected that the Trump Organization has eliminated significant amounts of debt over the past years.

Having looked at that paragraph, are you still telling us that you are not in a position to recognize that the document referred to here is your father's Statement of Financial Condition?

It's possible, sir. I just don't want to speculate.

Q I am going to ask you to answer my question yes or no because I think --

MS. H BB : Objection. sked and answered.

MR. MER: I think it was a yes-or-no question asked. Can I have a read back?

THE COURT: Well, let's compromise. Let's try one more time. I believe it was asked and answered, but just ask -- a read back or a rephrasing or repetition, whatever you want, Mr. mer.

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MR. MER: Sure.

Q I've just now read that first paragraph. Is it your testimony, sir, that you are not able to confirm in your own mind that what's being referred to here is your father's Statement of Financial Condition?

I cannot confirm because it doesn't sound like I was physically there and I don't want to speculate.

Q The next paragraph indicates "the cash and cash equivalents were in the hundreds of millions, the assets in the billions -- billion of dollars were more than ten times the liabilities on the financial statement." You see that?

I do.

Q Okay. nd you're still unclear about whether this is referring to your father's financial statement?

MS. H BB : Your Honor, I'm going to object.

THE COURT: Overruled. He did introduce further --

MS. H BB : Okay, but he's testified that he doesn't -- this letter wasn't to him. He doesn't know. He's going to try and get him to obviously authenticate it, but I think his testimony still stands. I'm just stating my objection for the record.

MR. MER: It's already in evidence, Your Honor.

MS. H BB : Then I'm not really sure what we're doing.

MR. MER: It will become clear very soon.

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THE COURT: Objection overruled.

It is very possible that it was the statement. I just don't know because this wasn't directed at me.

Q You, in fact, worked with Mr. Weisselberg to arrange to have Mr. Delk review your father's Statement of Financial Condition as part of his due diligence efforts for the sale of the club, isn't that right?

I absolutely probably would have been the person who made the introduction to llen Weisselberg, yes.

Q Not my question.

I think it was.

MR. MER: Can I have a read back, Your Honor? Because that wasn't my question.

THE COURT: It didn't answer the question.

Let's just read it back.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

I have no recollection at this time.

MR. MER: Let's go ahead and mark Plaintiff's Exhibit 1092.

Q Mr. Trump, you'll see this is an e-mail chain where Mr. Delk e-mails Mr. Weisselberg copied to you on February 13, 2012 and Mr. Weisselberg asks you a question that you then respond to in the top e-mail. Do you see that?

Yes, I do.

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MR. MER: Your Honor, I move that this be admitted into evidence.

MR. ROBERT: Objection. Statute of limitations, Your Honor.

THE COURT: Overruled. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1092 in evidence.)

Q Now, the bottom e-mail from Mr. Delk to Mr. Weisselberg that you're copied on, the first paragraph says, "thank you again for taking the time to meet with me today and answer my questions. I was on the way to LaGuardia, two additional questions occurred to me," and then he asks those questions.

Do you recall that Mr. Delk in doing his due diligence traveled to the Trump Organization offices to review information for that effort?

I do not.

Q Mr. Weisselberg -- well, before I get there. You would agree with me that based on his e-mail to you and Mr. Weisselberg that is in fact the case?

Yes, it looks like that.

Q nd Mr. Weisselberg writes to you "before I respond I want to make sure you and your dad are still going forward with this deal. Your dad did not sound very upbeat about the deal. He spoke about how little we would make and that he did not see

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himself going to NC, etc."
You see that e-mail from Mr. Weisselberg to you; right?
Yes, I do.
Q nd then you respond confirming that in fact the deal is going to go forward; right?
Yes, that's what I responded.
Q nd is it fair to say as you indicate in your response to Mr. Weisselberg that you consider the deal to purchase the club to be close at hand and that you wanted to get it done?
Well, my exact words "because we had bigger fish to fry, but we have it on the one yard line."
Q nd I wasn't trying to use your exact words. I was just asking you if you would agree that what you're saying here is that the deal is close at hand and you wanted to get it done; right?
Yes.
Q Just going back, we had looked at the draft, due diligence summary that was attached to the prior exhibit. You recall that?
Yes, I do.
MR. MER: Let's go ahead and mark Exhibit 1091.
Q You'll see these are a series of e-mail exchanges among you, Mr. Delk and Mr. Weisselberg; right?
Yes, I do.
MR. MER: Your Honor, I move to admit this into

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evidence.
MR. ROBERT: Same objection, Your Honor.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1091 in evidence.)
Q If you'll look at page two of this document, the bottom e-mail, this is the same e-mail we had just looked at before that attached the due diligence summary; correct?
That's correct.
Q Then you actually on the bottom of page one respond to that e-mail directly to Mr. Delk; right?
Yes, I did.
Q nd you did at the time review Mr. Delk's due diligence summary as indicated in your response to him about it; right?
It sounds like it if it was attached to that e-mail.
Q Not my question.
Based on your response to him at the bottom of this page?
Yes, it looks like that.
Q You received and read Mr. Delk's due diligence summary that he attached to his e-mail; right?
Yes, it appears that way.
Q The one that referenced the Statement of Financial Condition; right?

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MR. ROBERT: Objection. It did not reference a Statement of Financial Condition.
The one that reference the financials, yes.
THE COURT: Well, he seems to think it did.
MR. ROBERT: I want to make sure it is a distinction. It doesn't talk about a Statement of Financial Condition. Fair enough.
Q nd here's what you write to Mr. Delk:
"Phil, sorry to be brash, but it was not the intent that a summary would be circulated to the members. The point of the exercise and the intent of our conversation was to give you and the board comfort that our personal financials have been reviewed on behalf of the members. This exercise was bound by confidentiality which is why we did it in person and was intended for you to be able to convey that you have reviewed our financials and mention that without question we have the financial wherewithal to purchase, renovate and operate this asset. I trust you understand and would appreciate you giving me your assurance that this will not be distributed."
That was your response to Mr. Delk after reviewing his draft due diligence report for the members; right?
Yes.
Q nd Mr. Delk responds in the e-mail above telling you you do not come across as being brash. He understands your concerns and he will not distribute the summary; that he will

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limit any communication to the fact that you do not -- that you do have the financial wherewithal to purchase, renovate and operate the club; right?
Yes.
Q nd you thank him in the e-mail above; right?
Yes, I do.
Q Can we agree that the due diligence exercise involved Mr. Delk coming to New York to review personal financials in person?
It sounds like he came to New York to review financials, yes.
Q nd you say the exercise was bound by confidentiality. Does this mean you required Mr. Delk to sign a non-disclosure agreement before he reviewed the personal financials?
I wouldn't know.
Q Well, it's your words in the response to him to say the exercise was bound by confidentiality. re you telling us you don't know what you meant by that?
I don't know if confidentiality was signed. Oftentimes when you get into a deal transaction at the beginning of the deal, both sides sign confidentiality agreements. It's very possible that one was executed. I just don't remember 12 years later.
Q t any rate it was your intent that he be bound by confidentiality with respect to his review of personal

financials during this due diligence exercise; right?
Yes, I think we would want to keep financials confidential. No different than any other private company in the world.
Q You were concerned about the personal financials that he was going to be reviewing being distributed to club members; correct?
Possibly. I think you wouldn't want 1,200 people to see personal financials. Yes, I think that would be accurate.
Q Having looked at this document, including your reply to Mr. Delk, can we agree that by February 2012 you were aware that your father had a personal financial statement that was being used by the Trump Organization to demonstrate to a third party the company's financial wherewithal?
MR. ROBERT: Objection. He keeps referencing a personal financial statement. ll we're seeing in these e-mails are personal financials being provided. That's a huge distinction.
MR. MER: Your Honor.
THE COURT: It's definitely a distinction. I don't know how huge or small it is. Mr. mer, go ahead.
MR. MER: I think the witness can answer the question yes or no. If he doesn't agree with the way I phrased the question he can answer no.
THE COURT: Overruled. Do you need a read back or

a restatement?
THE WITNESS: Can I have a read back. Thank you.
THE COURT: Read back, please.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
I don't want to nitpick this. Clearly the board member came in to review financials and he did so with llen Weisselberg and not with me. Do I have an understanding that financials were reviewed, yes. Do I have any understanding or had I ever seen my father's Statement of Financial Condition, no. It's just not what I did for the company, sir.
Q You read the due diligence summary that we put up on the screen?
Yes, I did.
Q t the time; correct?
It appears so.
Q nd in response to seeing that you then told Mr. Delk that you were concerned about releasing that summary to the members; correct?
I wouldn't want financial information to be released to 1,200 people no matter who they were.
Q That wasn't my question.
MR. MER: Can I get a read back, Your Honor?
THE COURT: Sure. nd I agree that did not answer the question.

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
Correct.
Q re you telling us that when you sent your response to Mr. Delk telling him he -- telling him he was bound by confidentiality and he shouldn't release the summary to his members that you had no idea what personal financials he was looking at as part of his due diligence exercise? Is that your testimony?
It would be my testimony that he was looking at financials. s to what financials he was looking at, I do not know.
Transcript continues on the following page....

Q So that's your testimony? You had no idea what the financials were that Mr. Delk was looking at as part of his due diligence exercise when you wrote this e-mail to him, right?
That's correct.
Q Can we agree that your involvement in this due diligence exercise with Mr. Delk was to allow him to determine if the Trump Organization had the financial wherewithal to purchase, renovate, and operate the club?
bsolutely.
Q nd can we agree that your involvement in this due diligence exercise was just seven months before Mr. McConney indicated that he had his first call with you about Seven Springs which just to remind you was in September of 2012?
Sounds correct from a date standpoint, yes.
Q Can we at least agree that by 2012 you were aware that the company had personal financials available to share with third parties for them to understand whether the company had financial wherewithal?
THE COURT: Hold on. You said "personal financials." Can you be more specific?
MR. MER: I think that's the phrase from the due diligence summary, Your Honor, so I think it's a fair question.
THE WITNESS: Your Honor, that's the same thing I'm battling as well.

THE COURT: I'm not saying it is a fair question. I'm just not sure that's what you really want to know.

THE WITNESS: I understood we had financials as a company and we had an accounting department that would often refer or would sometimes work with outside entities such as this. They go through them. I was not personally aware of the Statement of Financial Condition. I didn't work on the Statement of Financial Condition. I've been very, very clear about that.

MR. MER: Let's go to the 2013 Jeff Supporting Data. It is native 708.

Q Let's go to Row 640 and you'll see this references a call with you on ugust 20, 2013, right?

Yes, it does.

Q Isn't it a fact, sir, that in connection with that call, Mr. McConney told you that he needed information from you to value Seven Springs expressly for your father's Statement of Financial Condition?

Not to the best of my recollection.

MR. MER: Why don't we split the screen and put up along with this Plaintiff's 1075.

Q This is an easement from Mr. McConney to you dated ugust 20, 2013, the same date as the call Mr. McConney references in his supporting spreadsheet, right?

Yes.

MR. MER: Your Honor, I move this into evidence. Move to admit it into evidence.

MR. ROBERT: Objection; statute of limitations.

THE COURT: Overruled. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1075.)

Q Mr. McConney writes to you, sir, "Hi, Eric. I'm working on your dad's annual financial statement. I need to value Seven Springs. ttached, please find how we valued it last year. Can you let me know when you have time to talk about this year's valuation." Do you see that?

I do.

Q So you were told by Mr. McConney expressly in connection with this call that he notes in the supporting data spreadsheet that he's working on your dad's annual financial statement, right?

Okay.

Q Well, not okay. Right?

Yes. People come to me all the time to ask me questions about various projects I'm involved with, absolutely.

Q nd on this date, ugust 20, 2013, in an e-mail, he told you that he was working on your dad's annual financial statement, correct?

It's absolutely what it says, yes.

Q So you did know about your father's annual financial

statement as of ugust 20, 2013, didn't you?

It appears that way, yes.

Q nd he told you that he needed to value Seven Springs for that annual financial statement, right?

That's what it says, yes.

Q nd he attached to this e-mail on the second page an excerpt from his supporting data spreadsheet, didn't he?

Yes, he did.

Q So you've actually seen portions of Mr. McConney's spreadsheet at the time that he was working on it, right?

Yes. I see some blank cells and some cells that were already filled out before this e-mail on Excel spreadsheet, yes.

Q If we go back to his cover e-mail, he says, " ttached, please find how we valued it last year."

So he's showing you how it was valued in 2012 and he's asking for your assistance in valuing it for 2013, right?

Yes. It appears that it was already valued in 2012 and he is asking for my assistance in valuing it for 2013, yes.

Q nd that's the topic of his telephone conversation with you on ugust 20, 2013, the same date as this e-mail --

Well, I want to --

Q -- Exhibit 1075, right?

I just want to clarify. If I'm looking at the footnote, it says, "Per telephone conversation with Eric Trump, New Castle land to be donated, North Castle to be used as part

of the main mansion." Those are absolutely facts that I could have given Jeffrey McConney. That's definitely something he could have come to me to ask. It seems like the values had already been established in the spreadsheet from the year before, meaning prior to my involvement in the project.

Q Do you now have some recollection of this call that you didn't have before?

No, I don't. I think I'm pointing out the footnote that you say references numbers and it seems like the footnote -- it seems like the footnote is referencing New Castle land to be donated which was our intent at the time and North Castle land to be used as the part of the main mansion.

Q Just to be clear, when you say "footnote," this is Row 640. It is a note, right? It is not a footnote. It is not a footnote noted anywhere on this page. It is just a note on Row 640, right?

I'm referencing the two notes directly below that mention of my name which would have been consistent with something I would have given Jeffrey McConney, the current status of an active development project, yes.

Q Okay. nd what you received, which was the second page of the e-mail, was an excerpt from the supporting data spreadsheet that had information on Bedford seven Mansions approved with a selling price, a cost, a profit, number of homes, and a value, right?

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That's correct and it looks accurate, yes.
Q That's also information you knew at the time, right? That we were going to develop at the time seven homes on that property?
Q Yes.
Yes, I would have known that.
Q You would have had information relating to the selling price, the cost, the profit, the number of homes, right?
No. I think it is established that this pre-dated me. He's asking this in 2013. It seems like he's updating numbers that were already there pre my involvement. t least that's how I'm reading this.
Q I'm not asking you to read this. I'm simply asking you to confirm that that information, the details about the seven mansions would have been information that you would have known about at the time of this call, right?
Yes, I was working on the zoning at that time.
Q So just to confirm where we are, on the same day as the call Mr. McConney references he had with you in his supporting data spreadsheet, he tells you in an e-mail that he needs to value Seven Springs for your father's annual financial statement and needs to speak to you about the 2013 valuation, correct?
Yes.
Q nd he shares with you the basis for the prior year's valuation lifted from his spreadsheet, right?

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Yes, it looks to be correct.
Q Mr. Trump, it is an undeniable fact, is it not, that as of September 24, 2012, the date McConney noted he had his call with you about Seven Springs, you did know that your father had an annual financial statement?
You knew it was shared with third parties to demonstrate the company's financial wherewithal and you knew Mr. McConney was going to use the information that you provided to him to value Seven Springs for your father's statement; isn't that right?
MR. ROBERT: Objection.
It's just incorrect.
THE COURT: Compound question.
MR. ROBERT: Compound and stating facts the witness didn't testify to, but the witness just answered.
It is just incorrect.
THE COURT: Okay.
Q Isn't it a fact, sir, that you were aware that your father's Statement of Financial Condition was being provided to a bank for review in connection with a banking transaction even before February 2012?
Not to the best of my knowledge sitting here right now.
MR. MER: Why don't we go ahead and mark Exhibit 1265.
Q You see, Mr. Trump, that there's a bottom e-mail from a

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woman named Elena Sita at FNBLI, which I represent to you is First National Bank of Long Island, to Mr. Weisselberg that he then forwards to you and others at the Trump Organization. Do you see that?
Yes, I see that.
Q nd you'll see there is an attachment which is a confidentiality agreement which is the second -- starts on the second page of this exhibit?
Yes, I do.
MR. MER: Your Honor, I move that this be admitted into evidence.
MR. ROBERT: Objection; statute of limitations and relevance.
THE COURT: Overruled.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 1265.)
THE COURT: Overruled on statute of limitations. Relevance, we will see where we are going with it.
Q You will see that the attachment is a document entitled, "Confidentiality between the First National Bank of Long Island and Trump cquisition, LLC," right?
Yes.
Q nd you'll see from the last page of the document that it is executed by someone from the bank, right?
I don't know what this document is, but that appears

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that it is executed by somebody from the bank.
Q It is a document that was forwarded to you by Mr. Weisselberg, right?
pparently, yes. It's 2010. I think I was 26 at the time, 24.
Q nd if you look at the confidentiality agreement that's attached, the second paragraph says, "Whereas before on and/or after the date hereof disclosing party may furnish recipient" -- the disclosing party is the Trump entity, right? If you look at the top paragraph, you see that?
Yes.
Q nd the recipient is the First National Bank of Long Island, right?
That looks to be correct, yes.
Q "Whereas before on and/or after the date hereof, disclosing party may furnish recipient with or cause recipient to be furnished with certain documents and information prepared by or for or belonging to disclosing party including without limitation a Statement of Financial Condition of Donald J. Trump as of June 30, 2010 and/or other financial documents and information." Do you see that?
I do.
Q Can we agree that is clearly a reference to your father's Statement of Financial Condition?
The chances of me reading a confidentiality agreement

that I didn't execute I would say is zero percent, but yes, we can agree that it says it in that paragraph.

Q nd Mr. Weisselberg and in his cover e-mail says, "CONFI received, F/S going to bank overnight." Do you see that?

I do.

THE COURT: Five-minute warning.

Q We can agree that F/S is an abbreviation for financial statement, right?

Yes, I would assume that's what our CFO would send to a third party.

Q So in 2010, you received from Mr. Weisselberg an e-mail forwarding a confidentiality agreement that clearly references your father's Statement of Financial Condition, right?

That clearly references a financial statement, yes.

Q Not a financial statement. Your father's Statement of Financial Condition. Do we need to go back to it? It says Donald J. Trump, right?

s I said, the chances that I read a confidentiality that I didn't sign would be very small, but yes, it certainly referenced that at that time.

Q nd he not only attaches it, but he says in the cover e-mail "financial statement going to bank overnight," right?

That's correct.

MR. MER: Let's go ahead and mark as the next exhibit Plaintiff's Exhibit 3332.

Q This is an e-mail from Mr. McConney to you dated ugust 23, 2013, correct?

That's correct.

MR. MER: Your Honor, I move to admit this into evidence.

MR. ROBERT: Objection. Statute of limitations.

THE COURT: Overruled.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3332.)

Q The subject of this e-mail in ugust of 2013 is "DJT F/S," right?

Yes.

Q You understood at the time that you received this e-mail that DJT was Donald J. Trump and F/S was financial statement, right?

Yes.

Q nd Mr. McConney says to you, "I'm working on the notes to Mr. Trump's annual financial statement and I'd like to include any major construction work that was started, completed, calculated at our golf courses during the last year (i.e., July 2012-now)." He says, "Example, Doral, we're doing a corporate overhaul of the Blue Monster at a cost of X million of dollars. Something short and sweet is all I need. Thanks in advance for your help, Jeff."

Mr. Trump, isn't it a fact that Mr. McConney is

reaching out to you for information specifically to assist him in working on the notes to your father's annual financial statement?

That's the exact kind of information I would give Mr. McConney, yes.

Q In his e-mail, he is specifically identifying the fact that he needs the information to work on your father's financial statement, right?

Yes, he's absolutely asking what we're doing on the ground at various projects, what's underway, and that's the kind of information I would -- I'm asked about every single day, but certainly I would have given Mr. McConney.

Q To be specific, though, when he asks you for the information, he tells you exactly why he needs it and he tells you that he needs it for your father's annual financial statement, right?

Yes. I know Jeffrey McConney does financial statements for my father. There's no hiding that.

Q So you would have understood at the time that you received this e-mail in ugust of 2013 that your father had an annual financial statement, right?

We're a major organization, a massive real estate organization. Yes, I'm fairly certain I understand that we have financial statements, absolutely.

Q Not my question. You've testified here quite adamantly

that you had no idea that there was something called your father's annual financial statement. So I'm being very specific in my questions, sir.

MS. H BB : Objection. You're mischaracterizing the witness' testimony. He didn't say he didn't know there's something called it. He didn't testify to that.

I said I had no involvement nor ever worked on my father's personal Statement of Financial Condition.

MR. MER: I'm not going to go back. We know what the testimony was, Your Honor. I'm just going to go forward and ask my question again. nd I ask that if the witness can answer yes or no, that he, please, do so.

THE COURT: I'll direct him to do that.

Q It is correct that when you received this e-mail in ugust of 2013, you understood that your father had an annual financial statement and you understood that Mr. McConney was asking you for information specifically to assist him in working on the notes to that annual financial statement; isn't that correct?

Yes.

THE COURT: Okay. Let's take a break. I'll direct the witness, as I always do, not to discuss this case or your testimony or anything related during the break or until you're no longer a witness.

THE WITNESS: Okay. (Witness exits the stand.)

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THE COURT: See everybody at 2:15.
(Whereupon, a luncheon recess was taken.)

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THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Please be seated and come to order.
MR. KISE: You're back to bounding. That's a good sign.
THE COURT: I know. I'm anxious to keep moving things along, and I've got the energy.
Okay. Let's continue with the examination of Eric Trump.
MR. MER: Thank you, Your Honor.
CONTINUED DIRECT EX MIN TION
BY MR. MER:
Q Mr. Trump, when we broke for lunch we were looking at Plaintiff's Exhibit 3332. If we can just put it up to remind ourselves where we were.
This was an e-mail you received from Mr. McConney where he was telling you he was working on the notes to your father's annual financial statement and was asking you for information. Do you recall that?
Yes, I do.
MR. MER: Let's go ahead and put up Plaintiff's Exhibit 1071 that we'll mark for identification.
Q Mr. Trump, this is your reply to the e-mail we were just looking at; correct?
Yes.

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MR. MER: Your Honor, I move to admit this into evidence.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. It's in.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1071 in evidence.)
Q So, based on this document you will agree that you received Mr. McConney's e-mail, you read it and you responded to it by providing information about construction work at Doral; right?
Yes.
Q nd when you provided that information you understood it was expressly for the purpose of assisting Mr. McConney in preparing the notes to your father's Statement of Financial Condition; correct?
That's incorrect.
Q You did respond to an e-mail that expressly referenced your father's annual financial statement; correct?
I think where we're getting tripped up is I clearly understood that I sent notes to Jeff McConney. I worked with him almost every single day. What's maybe not registering is the difference between sending him things that were used for financials and things that were used for a Statement of Financial Condition. Somebody from accounting would ask me

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something, they'd ask me details of a project and I would respond. I don't think it ever registered that it was for a personal Statement of Financial Condition. It was just a detail that was irrelevant to me.
Q Mr. Trump, did you speak to anybody about the substance of your testimony during lunch?
I did not.
Q Okay.
MR. MER: Your Honor, can I get a yes-or-no answer to my question? Because I think it was a yes-or-no question.
MR. KISE: Which question is that?
MR. MER: The one before.
THE COURT: Let's just get a read back.
(Whereupon, the requested portion of the proceedings was read back by the court reporter.)
MR. MER: I'm not the one about speaking to --
MR. KISE: Right, the one before that.
THE COURT: That's a simple yes or no.
It appears I did.
MR. MER: Let's go ahead and mark Plaintiff's Exhibit -- well, actually, it's already in evidence.
1112. The court officer will hand you a copy because it's already in evidence.
Q You'll see that this is an e-mail to you from

Mr. Weisselberg dated pril of 2015; yes?
Yes.
Q nd the subject is Seven Springs; right?
Yes.
Q nd you understood at the time of this e-mail that there was an outstanding mortgage on the property; right?
Yes, I think I would have known that.
Q nd the borrower on the mortgage was Seven Springs LLC; correct?
It appears that way, yes.
Q Were you president of Seven Springs LLC at this point in time?
I do not know.
Q t some point you did become president of that entity; right?
Yes, I did.
Q nd the first sentence of the e-mail says "if we have to pay off the loan I would like to do it post June 30th as that is the date of your dad's annual financial statement and where I to keep his cash balance as high as possible."
There is a grammatical error in that, but do we agree that what Mr. Weisselberg is telling you is that he wants to hold off paying off the loan if it's going to be paid off until after June 30th because that way he can keep the cash balance on your dad's annual financial statement as high as possible?

Yes. Mr. Weisselberg would make decisions like that, absolutely.
Q Well, that's what he's saying in this e-mail?
I agree with you. bsolutely.
Q So as of the date of this e-mail you understood that your dad's annual financial statement was as of June 30th; right?
One of my father's financial statements was June 30th, yes.
Q nd that it had a cash balance figure in the statement; right?
I think any financial statement would have a cash balance figure, but yes.
Q nd the second sentence says, "I realize this will only have an effect on his liquidity and not on net worth." Do you see that?
I do.
Q So you understood as of this date that your father had an annual financial statement that was as of June 30th that reflected his liquidity and his net worth; right?
I see the words on the piece of paper. I'm not sure if I would have paid a whole lot of attention to that, but yes, I absolutely see the words on the paper.
Q But you got this e-mail, so as of this date you understood those things; right?

I understand that there is plenty of financial statements in our company, absolutely, and I also understand the fact that if you pay off debt with cash you're still in the same net neutral space. That's just basic finance 101. bsolutely.
Q Okay. My question is very specific about your knowledge based on this e-mail.
When you got this e-mail and read it, you understood that your father had a financial statement as of June 30th that included both liquidity and his net worth; right?
Yes.
Q nd you knew that as of pril 2015; correct?
Yes. This e-mail was sent to me as of pril of 2015.
MR. MER: Let's go ahead and mark Plaintiff's Exhibit 1113.
Q Mr. Trump, this is an e-mail exchange between you and Mr. Weisselberg concerning a line of credit for the Las Vegas property; right?
If you don't mind, just give me a second to read it. I'm not familiar with this.
Q Sure.
Yes, I understand this now.
Q This is an e-mail exchange between you and Mr. Weisselberg concerning a line of credit for Las Vegas; right?
Yes.

MR. MER: Your Honor, I move to admit this into evidence.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled.
(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1113 in evidence.)
Q Now, Mr. Weisselberg's e-mail, which is the bottom e-mail says "I was speaking with Bender this morning and he happened to mention to me that Drew needed you" -- should be "your dad's financial statement as well as Phil's in order to secure a line of credit with B of ." Do you see that?
I do.
Q So you understood Mr. Weisselberg was looking to use your dad's financial statement to secure a line of credit from the bank; correct?
Presumably. I don't think I would have focused that much on that, but yes, according to this e-mail, yes.
Q Well, you read this e-mail because you responded to it in the e-mail above it; right?
Yes, I told him we didn't need to take out a line of credit and the renovations were to be very small.
Q But the fact that you responded to it confirms that you read it; right?
Yes, I clearly read it at the time.

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Q So you were aware from this e-mail that as of July 2015 your father had a financial statement that the company was intending to use to secure a line of credit with the bank; right?

Yes, as I've testified to I know our company has plenty of sets of financial statements.

Q The answer to my question is yes?

Yes.

MR. MER: Okay. Let's go ahead and mark as Exhibit 1079 another exhibit.

Q Mr. Trump, this is an e-mail from Mr. McConney to you dated February 23, 2017; correct?

Yes.

MR. MER: Your Honor, I move to admit this exhibit into evidence.

THE COURT: Granted. It's in.

(Whereupon, the item previously referred to is received and marked Plaintiff's Exhibit Number 1079 in evidence.)

Q nd you'll see there is a subject, it says "footnotes." Do you see that?

I do.

Q nd it has a PDF attachment. That's the second and third pages of this exhibit?

Yes.

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Q nd Mr. McConney writes to you, "Eric, we're working on your dad's financial statement. I've attached the footnotes relating to the three European clubs with all of the renovations that were done since the last statement in June 2015. I wanted to ask you if there is anything you wanted to add to or expand on in the footnotes. Thanks, Jeff." See that?

bsolutely. That would definitely be consistent with my job in the company.

Q nd if you look at the attachment, it's the footnotes from the Statement of Financial Condition for your father; right?

Yes, I would have focused on two of these three projects because I was actively building them at the time.

Q So Mr. McConney is asking for your input on footnotes that are part of your father's annual financial statement; correct?

These are property descriptions, but yes, that sounds right. I was building Turnberry at the time and I was building Trump Doondeg.

Q nd Mr. McConney is sharing with you a draft excerpt from the Statement of Financial Statement asking for your input on those -- that draft; correct?

Yes, he would have been asking for my input on the property descriptions.

Q nd he tells you in his e-mail that what he's attaching

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are footnotes to your dad's financial statement; correct?

I think we can agree and with your -- Judge, Your Honor, I know my father has financial statements. gain, I think I've testified to this pretty extensively. Yes, my father has financial statements. These are property descriptions that Jeff asked me to confirm. bsolutely.

Q So the answer to my question is yes?

Yes, I confirm property descriptions that Jeff sent or at least received the property descriptions that Jeff sent.

Q Well, but my question was different. My question was based on the e-mail you understood that what Mr. McConney was sending you was -- were -- was a draft of a portion of your dad's financial statement. You understood that at the time you got this e-mail in 2017?

I understood it as somebody from accounting was asking me for descriptions of property that I was actively working on building at the time.

Q He says "we're working on your dad's financial statement" and he's attaching footnotes. Do you see that?

I do.

Q Okay. So you understood when you got this that what he was attaching was a draft portion of your dad's financial statement; yes or no?

Yes.

Q Do you recall giving a deposition in this case at the

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ttorney General's offices earlier this year; yes?

I do.

Q nd your testimony during that deposition was under oath, just like your testimony is here today; correct?

It is.

Q I'm going to play video excerpt -- actually, a few excerpts from your deposition and in between each excerpt I'm going to ask you some questions. The first clip is page 259, line 10 to page 262, line 17.

(Whereupon, there is a pause in the proceedings.)

Q That was your sworn testimony at your deposition; correct?

Yes, and I think it's very accurate with what I'm saying right now.

MR. MER: Can we put up 1075, please?

Q Having reviewed the e-mails we've been discussing during the course of the past couple hour -- couple of hours, including this e-mail, will you now concede that in fact you were very familiar with your father's Statement of Financial Condition at least since 2013; yes or no?

Saying your dad's annual financial statement that reads to me very differently than the personal Statement of Financial Condition. Irrespective, I just don't think it would have registered if somebody from accounting is asking me a question about a property description or how many lots could be built on

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a property, I don't really care where it's being used. I care about providing them the information from the department that I'm running.

MR. MER: Your Honor, I'll move to strike the answer and ask that the witness be instructed to answer my question yes or no.

MR. ROBERT: Your Honor, I submit the question was a little bit of a loaded question because it started out with "very aware." I mean, he was trying to make a point and Mr. Trump answered it appropriately.

THE COURT: Why don't we do this, another compromise. You can call it -- I won't strike what he said. He said what he said and I think it wasn't totally divorced from your question, but why don't we get a read back or ask him the question as simply as you can and if it's a yes or no, I'll direct him to answer yes or no.

MR. MER: That's fine. I will say other witnesses have been directed not to give speeches after the yes or no and that's what I'm asking that you direct him not to do.

THE COURT: Yes. If it's a yes-or-no question and you answer yes or no, unless you absolutely need -- well, no. No exception. No speech. You can be cross examined, but if it's yes or no and you can answer yes or no, then we don't want a speech.

THE WITNESS: I'm just trying to be very clear for

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everybody, Your Honor. bsolutely.

THE COURT: But there is a system going on here, question, answer. Yes or no, answer yes or no. No speech.

Do we need a read back or can you just restate or reformulate the question or just -- I can't remember did he answer it yes and then give his speech or no and then give his speech?

Q I'll repeat my question and ask you to please answer it yes or no.

Having reviewed the e-mails we've been discussing during the course of the past couple of hours, will you now concede that in fact you were very familiar with your father's Statement of Financial Condition at least since 2013; yes or no?

No, I was not very familiar with my father's financial statement, no.

Q Will you concede that in fact -- that you did in fact know as of ugust 20, 2013 that Mr. McConney was intending to use the information you provided to him to value the property for the Statement of Financial Condition; yes or no?

Yes, it appears that way from the e-mails.

Q Let's play another clip. It's page 273, lines nine to 20.

(Whereupon, there is a pause in the proceedings.)

Q That was your sworn testimony at your deposition; yes?

Yes.

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Q nd will you now agree that you did in fact know about the backup for the Statement of the Financial Condition because Mr. McConney had forwarded you an excerpt from his supporting spreadsheet when requesting information from you for that property; yes?

I will agree that it didn't register. I certainly provided Jeff material for whatever exercise he was undertaking, but yes, I would agree.

Q Let's play another clip. This one is page 274, lines 15 to 25.

(Whereupon, there is a pause in the proceedings.)

Q Will you now concede that you did in fact have an understanding when speaking to Mr. McConney about Seven Springs that he was seeking the information from you for the expressed purpose of valuing the properties for your father's Statement of Financial Condition; yes or no?

Same answer as before. It just didn't register, so yes -- does it appear he ultimately was, yes. It didn't register to me and I provide him the exact same information as I provided him at the time all over again absolutely.

MR. MER: I think we may need a reminder about no speeches after answering yes or no, Your Honor, please.

MR. ROBERT: I think it was an appropriate answer.

THE COURT: I think it was a speech. These are yes-or-no questions.

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Q I'll take the yes, but please if I ask you a yes-or-no question, then just --

Just trying to be very clear.

Q Your lawyers will have an opportunity to question you.

I understand.

Q They may not take it, but they have it.

MR. MER: Last clip and then we'll move on. This is page 276, line 18 to 277, line 13.

Q Mr. Trump, will you now concede that despite being confident at your deposition that you didn't know the conversations you had with Mr. McConney were ever used as part of the work product for the Statement of Financial Condition you did in fact understand at the time of your conversations with him that the very purpose of his requests to you for Seven Springs information was to use that information for the Statement of Financial Condition; yes or no?

MR. ROBERT: Objection.

No.

THE COURT: I'm sorry, what was the answer?

(Whereupon, the requested portion of the proceedings was read back by the court reporter.)

Q I'd like to ask you some questions about the conservation easement donation for Seven Springs.

bsolutely.

Q You were aware that there was a conservation easement

donation made on the Seven Springs property; correct?
Yes.
Q nd that donation was made by Seven Springs LLC based on a final appraisal by Cushman & Wakefield; correct?
That's correct.
Q Do you recall that the easement donation was made for the tax year ending 2015?
That sounds correct.
Q Do you recall that the process of exploring a conservation easement on the Seven Springs property began a few years earlier in 2012?
I have a vague recollection of that now, yes.
Q Let's go ahead and have you look at Exhibit 908, which is already in evidence.
Mr. Trump, you'll see this exhibit is an engagement letter between Robert F. Heffernan & ssociates and Bingham McCutchen LLP and that this engagement is to provide consulting services to the law firm in connection with services the law firm is providing to its client Donald J. Trump. Do you see that?
I do see that, yes.
Q nd the second paragraph says that the scope of the assignment is to provide a written appraisal estimating the fair market value of a conservation easement placed on the Seven Springs estate. Do you see that?

I do.
Q nd on page four you will see -- you recognize Ms. Dillon's signature; correct?
Yes.
Q nd can we agree that Ms. Dillon would have required the Trump Organization's approval to enter into this engagement on behalf of her client?
Yes.
Q Let's go ahead and look at Exhibit 3296 for identification.
Now, see the bottom e-mail is from Mr. Heffernan to Bob Leonard and he is with -- if you turn to the next page you'll see he's with Bingham McCutchen, which is Ms. Dillon's firm and is counsel to the Trump Organization in connection with this engagement; correct?
Yes.
Q nd in the very bottom e-mail from Mr. Leonard he -- this is on December 18, 2012, he writes to Mr. Heffernan and says -- and asks if he's available for a call around two. Then he says "I understand Eric contacted you and wanted to get some details on your assumptions that led to your initial estimate." Do you see that?
I do.
Q Do you recall in this time frame that you had been in touch with Mr. Heffernan and you understood he had an initial

estimate and you wanted some details on his assumptions?
I don't remember much about this engagement, no.
Transcript continues on the following page....

Q Well, I'm just asking very specifically if you remembered that. Did you?
I don't remember that.
Q Do you have any reason to believe that Mr. Leonard's understanding as reflected here in this e-mail was incorrect?
I would have nothing to base that on, no.
Q So you have no reason to believe it's incorrect, yes?
Yes.
Q nd if you look at Mr. Heffernan's e-mail in response, which is the next e-mail up, the very end, he references his value would have been 775,000 per raw lot for Seven Springs, correct, raw lot?
I see that, yes.
Q nd so if you had contacted Mr. Heffernan, you would have learned about his initial estimate of 775,000 per raw lot, right?
I would not make that assumption at all, no.
Q You did understand according to Mr. Leonard that Mr. Heffernan had an initial estimate, right?
It's very possible. I just -- again, I remember very little about this engagement at this point. This is a very long time ago.
MR. MER: I'm going to ask to move this e-mail chain and I want to be very specific about which portion gets admitted for which purpose. Mr. Leonard's e-mails come

in for all purposes based on an exception to hearsay under CPLR 4549, which was just recently enacted a couple of years ago to create a hearsay exception for parties' agents statements made within the scope of the agency.

nd here, we have Mr. Leonard is the agent as counsel speaking within the scope of his agency role and I'm going to ask that Mr. Heffernan's e-mail comes in only for purposes of notice of what he told Mr. Leonard who was the Trump Organization's agent.

MR. ROBERT: I disagree as to the hearsay exception. They had Ms. Dillon here who they could have shown the e-mail to authenticate who I believe is the partner we are talking about, Mr. Leonard, if I'm not mistaken. nd on that basis alone, I don't think this is admissible that portion is hearsay in addition to my usual statute of limitations objection, Your Honor.

THE COURT: Well, the fact that they could have asked Ms. Dillon doesn't mean they can't try to introduce evidence some other way.

MR. ROBERT: Even if you bring in as an agent, it would be an agent of whoever the retained party was who did this. So if you're bringing it in as a statement, we'd have to check the engagement letter, but it was Seven Springs, LLC or whatever entity it is who Mr. Leonard and Ms. Dillon was representing. Then that's, I guess, fair game, but to

say it comes in as an admission for Mr. Trump or any other individual other than who she was the agent for, I would say is improper, so tell us who it is you say they are the agent for.

THE COURT: Mr. mer, you want to answer that?

MR. MER: Sure. Exhibit 908, the engagement letter indicates that the client is Donald J. Trump. I'll take that.

MR. ROBERT: Can I see the exhibit, please?

MR. MER: It's 908.

MR. ROBERT: Fair enough.

THE COURT: Objection overruled.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 908.)

Q We saw that Mr. Leonard's e-mail indicated his understanding that you had contacted Mr. Heffernan by mid December of 2012, correct?

I appear so.

Q If we put up 2013 Jeff Supporting Data PX 708 in evidence, and if we go to Row 638 and 640, we can agree that the contact that Mr. Leonard indicated you had with Mr. Heffernan is about six or seven months prior -- actually would be about eight months prior to the ugust 20, 2013 call that you had with Mr. McConney, right?

It appears that way, yes.

Q Can we agree that there's nothing in this spreadsheet that reflects information from Mr. Heffernan; yes or no?

I wouldn't know. I know nothing about this spreadsheet and I didn't create this spreadsheet, so that's a question for somebody else. I wouldn't be able to accurately tell you not knowing the document.

Q Well, you're the one who purportedly had contact with Mr. Heffernan, so do you recognize any of the figures on this spreadsheet as being figures that you might have obtained through conversations with Mr. Heffernan?

MR. ROBERT: I think the disconnect, Your Honor, is Mr. mer may be referring to this one entry on the spreadsheet, not the entire spreadsheet, which is much greater in detail. That may be where the confusion is here because he's asking him is it anywhere in the spreadsheet. The spreadsheet, as my understanding, is pretty thick.

MR. MER: I'll limit my question to the document that's up on the screen. That's the excerpt from the spreadsheet.

THE COURT: ll right. So we are just talking about the excerpt?

MR. MER: Yes.

MR. ROBERT: That's fine.

You have to repeat the question because there's many disconnects here, but, please, go ahead and --

Q Do you recognize any of the information on this page, the excerpt from the spreadsheet as being information based on a contact with Mr. Heffernan?

I don't, but I think they are two distinctly different exercises.

Q So the answer is no?

No.

THE COURT: See.

Q You would agree with me that your answer is no, correct?

It couldn't be because they are two totally different subject matters and --

THE COURT: The document speaks -- it doesn't speak for itself. It doesn't say Heffernan. Do you want to --

Q The question is whether you recognize any of these figures as figures that would have come from Mr. Heffernan? Do you, yes or no?

I don't recognize those figures to begin with, so I would not be able to answer that question.

THE COURT: We'll take that to be a no.

MR. MER: Yes.

Q Do you recall that about a year and-a-half later, so in mid 2014, you reached out to David Mc rdle of Cushman & Wakefield to start the ball rolling on getting a preliminary

value from him for an easement donation on Seven Springs?
I do. I remember David Mc rdle slightly better. It is a vague recollection, but I remember that David was with Cushman, yes.
MR. MER: Let's look at Plaintiff's Exhibit 3330 for identification.
Q This is your e-mail to Mr. Mc rdle in June of 2014. The subject is "Seven Springs" and you indicate it was great speaking to him earlier. So you had a conversation with Mr. Mc rdle?
It appears so, yes.
Q nd you're making arrangements in this e-mail to have him come and inspect the property; is that right?
Yes. I was setting him up with your general manager to inspect the property. I believe Sheri retained him just prior to this.
Q nd the reason for setting up an inspection of the property was for him to move forward with an appraisal for an easement donation, correct?
That's my understanding, yes.
MR. MER: I move to admit this document.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3330.)

Q nd you did, in fact, arrange for your general manager -- is her name pronounced Deb?
Debbie, yes. I passed Mr. Mc rdle off to Debbie who I'm sure gave him a property tour.
Q This was for the purpose of having him come up with a preliminary value; is that right?
You would have to ask Sheri Dillon. She's definitely closer to the details of this than me, but that would be my assumption, yes.
Q I realize we could ask questions to a lot of people, but I'm asking them to you. I just want your best recollection.
It would be my best recollection, yes.
Q Thank you.
MR. MER: Let's go ahead and mark Exhibit 3331 for identification.
Q nd this is a series of e-mail exchanges beginning with the one we looked at before between you and Mr. Mc rdle, right?
Yes.
MR. MER: I move to admit this into evidence, Your Honor.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3331.)
Q Mr. Mc rdle, in the middle e-mail responds by asking if

we could target -- if you could target June 17th for his inspection and you in the top e-mail forward that on to Debbie and you say -- you ask her if this would work for an hour or so and then you say, "I'll call to give you the details." Let me just stop right there.
Can we agree, then, that you had details with respect to what needed to happen with the inspection?
Yes. I would have had to tell the person who is running our property generally the purpose for the visit.
Q nd you knew the details as of this point in time, correct?
This was probably very preliminary at the point, but yes, I would have said that he's an appraiser coming up to the property, please tour the person around.
Q You go on to say that you'll do your best to make it to the inspection as well, correct?
That's correct.
Q So we can agree that you deemed it sufficiently important for you to take time out of your schedule to do your best to attend the inspection that Mr. Mc rdle was going to conduct, right?
If it was extremely important, I would have said I will make it as opposed to do my best to make it; but yes, if I was free and was able to attend, I would have. I would have joined.
Q Well, not if you were free, but you'll do your best to

try and make yourself free to attend the inspection, right?
We'll agree. If I was free, I would have done my best to make it.
Q Let's go ahead and look at Plaintiff's Exhibit 169 in evidence. This document is an -- we had testimony from Mr. Mc rdle, this was an internal e-mail and he says -- this is September 8, 2014 -- in the second sentence, "I have completed the research and all verbal consulting."
Do you see that?
Yes, I see that.
THE WITNESS: Your Honor, I don't mean -- if they're struggling, I can see it right there.
THE COURT: Tommy and Mike, I have it on the screen. It is already in evidence.
THE WITNESS: Guys, don't worry about it.
THE COURT: Thanks. The screen version is better because you get all the highlights sometimes. By the way, my favorite words in this trial are "already in evidence," so we don't have to fight about whether something is admissible or not.
MR. ROBERT: I think mine, too.
Q So we can agree that by September 8, 2014, Mr. Mc rdle had completed his consulting on this engagement, right?
I have no reason to doubt Mr. Mc rdle.
Q nd so by that date, you would have received verbally

from Mr. Mc rdle his preliminary value for the potential easement donation, right?
I don't remember.
Q Well, if he completed his consulting, you would have received verbally his assessment by that date because that was part of the consulting engagement, wasn't it?
I don't know if it would have been done with me at the end -- Sheri really ran the engagement with Mr. Mc rdle, so I couldn't tell you.
Q So either you or your agent Ms. Dillon had received verbally from Mr. Mc rdle his preliminary value as of September 8, 2014 according to this e-mail, yes?
Yes.
Q nd am I correct that shortly after September 8, 2014, you decided to have Mr. Mc rdle proceed with a formal written appraisal for the potential easement donation; is that right?
I truthfully don't remember.
Q Let's go ahead and look at Exhibit 3188 in evidence. You'll see that this is a series of e-mails among you, Mr. Mc rdle and Ms. Dillon. I'm just going to walk you through some of them.
The first e-mail in the chain, which is on the bottom of page two, is from you to Mr. Mc rdle and Ms. Dillon asking about their schedule to set up a call and this is on ugust 11, 2014. Do you see that?

I do.
Q nd then the top of the page is Ms. Dillon's e-mail back to you and Mr. Mc rdle with her date preference, right?
Yes.
Q nd on the first page of the exhibit, the bottom e-mail is from Mr. Mc rdle with his date preference. Do you see that?
I do.
Q nd then finally, the top e-mail is from you setting a meeting for the following Monday which based on the fact that you're sending this Monday, ugust 11th, would be ugust 18th, right?
Presumably.
Q I think the Court can take judicial notice that --
I'll take your word for it.
Q -- the next Monday --
I'll take your word for it. It sounds right.
Q -- is ugust 18th. You indicate you will -- "I will send around a calendar invite"?
Yes.
Q In the second sentence of your e-mail, "Sheri, by that point, ideally, you will have seen the draft appraisal." Do you see that?
I do.
Q So your expectation was that sometime between ugust 11th and ugust 18th, Ms. Dillon would have received the

draft appraisal report from Mr. Mc rdle, correct?
That sounds correct, yes.
Q nd we can agree, then, that after the verbal consulting, you had decided to move forward with having Mr. Mc rdle actually draft a formal appraisal, right?
I believe that's the case, yes.
MR. MER: Let's go ahead and mark for identification Exhibit 3327. We just need to get the right exhibit up.
Q So this is a calendar invite that you send back in July setting a date for the Seven Springs appraisal being due of 8/15/2014, correct?
It is very consistent with my OCD personality, yes.
Q So that's why you expected that Sheri Dillon would have received the report by the 18th because you had already calendared it for the 15th of ugust, correct?
I would assume that's a milestone that she set out and we calendared the date, yes.
Q Then if you look at the second page of this exhibit, this is Mr. Mc rdle accepting that calendar invite, right?
It appears to be, yes.
Q nd so that's why you had an expectation that by the time of your call on ugust 18th, the appraisal would be in hand, the draft appraisal, right?
Presumably, yes.

MR. MER: Let's go ahead and put up Plaintiff's Exhibit 3206 in evidence.
Q This is the calendar invite for the call on the 18th that we previously saw had been scheduled the week before, right?
I don't remember much about this, but it looks to be correct.
Q That's a calendar invite you sent, yes?
It looks to be, yes.
Q Okay. nd you titled the subject "Seven Springs valuation call," right?
I did.
Q So we can agree that the purpose of the call was to discuss the Seven Springs valuation that Mr. Mc rdle was coming up with, right?
That seems to make sense. I don't remember much about any of these details, but I presume that's correct, yes.
MR. MER: Your Honor, I'm not sure if I moved in evidence 3327, so I'll do that now. That was the prior document.
MR. ROBERT: Statute of limitations.
THE COURT: Overruled. It is in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3327.)
Q nd do you recall that in this time frame, you signed a

formal engagement letter with Cushman for Mr. Mc rdle to provide a written appraisal for the potential conservation easement over Seven Springs?

It sounds like that's something that we would have done, yes.

MR. MER: Let's go ahead and look at Plaintiff's Exhibit 133 in evidence.

Q You will see that this is an engagement letter addressed to you dated September 15, 2014 and you -- if you turn to page 6 of 8, is that your signature agreeing to this engagement letter?

Yes, it is.

Q nd you sign it on September 18, 2014, correct?

That's correct, yes.

Q nd on page one of the engagement letter, the type of opinion and rights appraised says "fair market value of a conservation easement," correct?

Yes, that was the exercise at hand.

Q Let's go ahead and mark for identification Plaintiff's Exhibit 3189. You'll see these are e-mail exchanges between you, Mr. Mc rdle and Ms. Dillon, and I'll represent to you that all of the exchanges are ones we've seen before in the prior exhibits except for the one at the very top, which is from you to Mr. Mc rdle dated ugust 18, 2014, the date of the valuation call.

Do you see that?

Yes, I do.

Q nd you can just look, the prior e-mails have just the back and forth setting up the date preference for the call.

Do you recognize those?

Yes.

Q nd in the top e-mail from you to Mr. Mc rdle is forwarding along a Zillow listing; is that right?

Yes, that appears to be a Zillow listing.

Q nd you're sending Mr. Mc rdle a comp for him to consider in connection with the appraisal engagement; is that right?

I don't have this at this point, but it was some data point that I thought was maybe relevant to whatever the exercise at hand ultimately was.

Q Well, let me just make sure we're on the same page. Do you agree that what you're forwarding is a comp for Mr. Mc rdle to consider in connection with his appraisal engagement on Seven Springs, yes or no?

Yes.

MR. MER: I move to admit this, Your Honor.

MR. ROBERT: Statute of limitations.

THE COURT: Overruled. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3189.)

Q The comp is 168 Hook Road, Bedford, New York. Let's ahead and put up Exhibit 3190 for identification.

3190, same e-mail string except for a different e-mail at the very top. You're forwarding to Mr. Mc rdle now a Zillow listing for a 72 Guard Hill Road, Bedford Corners, New York.

Do you see that?

I do.

Q Same day, a second comp that you're forwarding to Mr. Mc rdle for his consideration, correct?

Clearly, I was trying to show them some data point that I thought they would think was relevant, yes.

MR. MER: Your Honor, I move to admit this into evidence.

MR. ROBERT: Statute of limitations.

THE COURT: Overruled. It is in, and five-minute warning.

(Whereupon, the Plaintiff was marked in evidence as Plaintiff's Exhibit 3190.)

MR. MER: Let's go ahead and put up Exhibit 3207 for identification.

Q Mr. Trump, this is another calendar invite you send to Ms. Dillon and Mr. Mc rdle with the subject "call Seven Springs."

Do you see that?

I do.

Q nd this was a call that you scheduled for ugust 25, 2014?

Yes.

Q Do you recall a few weeks after the scheduled date of this call you decided to terminate the engagement with Mr. Mc rdle without getting a final appraisal report?

That could be accurate. I, again, have very little recollection of all of this maybe because it was terminated, but I'll take your word for it.

Q Well, let's confirm the date. So let's go ahead and look at Plaintiff's Exhibit 185 in evidence, and this is an e-mail from Ms. Dillon to Mr. Mc rdle dated Monday, October 6, 2014.

Do you see that?

I do.

Q nd Ms. Dillon confirms that there's been a mutual agreement to terminate the engagement as of that date, right?

That's what this says, yes.

Q That would have been something that you would have authorized her to do, right?

I see no reason to believe that Sheri and I wouldn't have had a conversation about that.

Q Well, more than that you had a conversation, but that you actually authorized her as your attorney to terminate the engagement as of this date?

Presumably she was much closer to this than me. I just don't have a recollection of this sitting here today.

Q Well, would you agree with me that Ms. Dillon would not have the authority to terminate the engagement without the approval to do so from her client?

I imagine she told somebody. gain, I just don't have a recollection.

Q Okay. Let me try again because that wasn't my question. I'm just trying to confirm that Ms. Dillon would not have had the authority to terminate the engagement without getting authority to do so from her client; is that right?

Yes. If she made a recommendation, we would follow it; but yes, I think that's right.

Q Well, she's the one who has to follow your direction, not the other way around, because she's the lawyer and you're the client, right?

She was the one running this process, but yes, fair enough. I think you and I are --

THE COURT: By the --

-- in agreement.

THE COURT: By the way, that was another speech. The question was very simple. Would Sheri Dillon have terminated the engagement without authority from the client, yes or no? You said she would not have. Of course, we all know she would not have. You don't have to give a speech

after that.

Q Mr. Trump, just to close the loop, based on your testimony earlier that a donation was made in 2015, do you recall that Cushman was re-engaged to complete the appraisal report the following year?

Yes, I believe that's the case.

MR. MER: I'm going to try and see if I can get one more document in before we have to go. ctually, let me move to admit Exhibit 3207, Your Honor.

MR. ROBERT: Statute of limitations.

THE COURT: Overruled. It is in evidence.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3207.)

Q Let's quickly look at Exhibit 3328. Mr. Trump, you'll see that this is an e-mail -- the top e-mail is from you to a number of people within the Trump Organization as well as Ms. Dillon, right?

That's correct.

Q nd this is dated May 29, 2015, yes?

Yes, it is.

Q nd you have some follow-up items that you list in your e-mail to this team, correct?

Yes.

Q The item you list for Ms. Dillon is finalized Seven Springs appraisal, correct?

Yes.

Q So does this refresh your recollection that sometime in 2015, you re-engaged Mr. Mc rdle to -- or Cushman & Wakefield to finalize the appraisal report for the easement donation?

Yes, it does.

MR. MER: I move to admit this exhibit in evidence.

MR. ROBERT: Statute of limitations.

THE COURT: Overruled. If you want another five minutes, okay, or you want to break right now?

MR. MER: I think I have a little more on this, but let's take our break.

THE COURT: Back at 3:35, everyone.

(Witness exits the stand.)

(Whereupon, a recess was taken.)

(Continued on the next page.)

THE COURT OFFICER: ll rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: Right on time. I like to run a tight ship. Okay. Let's continue with the questions.

MR. MER: Thank you, Your Honor.

Q Let's go ahead and put up Plaintiff's Exhibit 719 which is the supporting data spreadsheet and I'd like to focus you on Row 660 and this is just to close the loop on the Seven Springs easement donation time frame in relation to the calls that Mr. McConney was discussing was indicating in his note. If you look at 660, that's the note that refers to his conversation with you on September 12, 2014. Do you see that?

I do, yes.

Q nd we can agree that that is in the time frame of when you were working with Ms. Dillon and Mr. Mc rdle to get a valuation for Seven Springs for the easement donation; correct?

It appears to be, yes.

Q nd this -- and it's after your ugust 18th valuation call; correct?

I've already told you I didn't provide values. I see nothing wrong with the values, but I didn't provide values. I've testified pretty extensive to that.

Q That was not my question at all. My question was the note about Mr. McConney's conversation with you in September of 2014, that was after the ugust 18, 2014 valuation call that we

looked at you had scheduled; correct?
It appears the dates were kept that way, yes.
Q Can we agree that Mr. Mc rdle's valuation was disregarded for purposes of valuing the Seven Springs property in 2014; yes or no?
I'm very confused to that question. I think you need to be much more specific. Is this the 2014 valuation that was never concluded? Is this the valuation that was concluded?
Q The Statement of Financial Condition valuation in 2014 that comes to a value of $291 million, can we agree that Mr. Mc rdle's valuation in connection with the easement donation engagement that he was doing was disregarded for purposes of coming up with that $291 million; yes or no?
No. The exercises are apples and oranges. They have nothing to do with one another.
Q That seems to be a yes to me because the question was whether Mr. Mc rdle's work was being disregarded for purposes of this value. You're telling me that it was apples and oranges. Is that your testimony?
MR. ROBERT: Objection, Your Honor. He's asking whether it was disregarded which presupposes it should have been regarded. If he wants to say is that the same number, that's a simple question that can be answered yes or no, but to suggest it's discarded meant it should have been used.
THE COURT: Disregarded, not discarded.

MR. ROBERT: Disregarded.
MR. MER: Either they took it into account or they disregarded it. Those seem to me to be the two obvious choices, so my question is whether he agrees that the Mc rdle valuation was disregarded for purposes of coming up with the $291 million figure in the Statement of Financial Condition. That's the question I'd like answered.
THE COURT: Objection sustained.
Q Mr. Trump, to your knowledge, did you ever forward to Mr. McConney or tell Mr. McConney anything about Mr. Mc rdle's valuation?
I would have never have thought to, no.
Q So the answer is you did not?
I didn't -- no, I did not. I would have never thought to because I didn't work on this document.
THE COURT: The short answer is no, you didn't do it. You don't have to explain why.
Q I'd like to turn now to Briarcliff. You're familiar with Trump National Golf Club in Briarcliff Manor, yes?
Yes.
Q Can we refer to that for short as Briarcliff?
bsolutely.
Q Let's go ahead and keep up 719, which is the 2014 Jeff Supporting Data spreadsheet and look at Row 267.
nd this begins the section on Briarcliff. Do you see

that?
Yes.
Q nd do you see that Rows 277 to 281 show a profit calculation for the sale of 71 mid rise units approved but put on hold?
I do, yes.
Q nd you're familiar with the plan to develop the 71 mid rise units on the property?
I am.
Q nd you had some involvement in developing those plans; is that right?
No. Those plans predated me, but I am aware of them.
Q Well, did you have involvement in working on the project to develop the 71 mid rise units?
They were zoned before I came into the company.
Q nd as of 2014 it was put on hold; right?
Yes. We retained the zoning, but it was put on hold.
Q Let's look at Plaintiff's Exhibit 157, which is in evidence already. If you look at page three of this exhibit you'll see there is an e-mail from Mr. Mc rdle to you on ugust 6, 2013. See that?
Yes, I do.
Q nd he's referencing a revised appraisal proposal and says "hope this works for you and we can move forward." Do you see that?

I do.
Q nd this was to move forward with an appraisal to estimate the value of the 71 units we were just talking about; right?
It appears so, yes.
Q nd the bottom of page two of this exhibit is your response to him; right?
Yes.
Q nd you write, "good morning, David. ttached please find the assigned proposal. I'm in the process of sending you the retainer of 6,250 by separate cover. I will send you all the information on 71 units."
So you had -- you were gathering whatever information he needed for his engagement to value the 71 units; right?
It appears to be, yes.
Q nd you are calendaring two dates that you are hoping Mr. Mc rdle can actually beat which is Phase 1 date of September 6th and a Phase 2 date of September 27th, the final report; right?
Yes, sir.
Q Let's go ahead and look at Exhibit 3195 in evidence. I think we spoke already about Bob Leonard, he's an attorney, at Bingham. Do you recall that?
Very vaguely.
Q nd he writes to Mr. Mc rdle -- well, let me backup.

Bingham was again acting as counsel for the Trump Organization in connection with engaging Mr. Mc rdle to do the valuation for the 71 units; is that right?

Yes, Sheri Dillon at Bingham was counsel.

Q nd he writes to Mr. Mc rdle in ugust -- I'm sorry, September of 2013 -- I'm sorry. This is the other way around. It's from Mr. Mc rdle to Mr. Leonard and he says, "Bob, I spoke with Eric yesterday and agreed to perform a discounted cash flow analysis reflecting a build-out scenario."

Do you recall discussing with Mr. Mc rdle the need to perform a discounted flow -- discounted cash flow analysis reflecting a build-out/sellout scenario for the 71 units?

Not off the top of my head, no.

Q Do you have any reason to believe that Mr. Mc rdle is inaccurately describing his discussion with you the day before he sends this e-mail?

bsolutely not.

Q Do you agree that estimating the current value for the profit to be realized from selling the 71 units requires performing a discounted cash flow analysis?

I wouldn't be familiar with the methodology.

Q Wasn't my question.

Meaning so I think the answer is no to your question. I wouldn't be familiar with the methodology, so not necessarily.

Q Well, do you have an understanding -- well, you had an

understanding at the time that Mr. Mc rdle was going to do a discounted cash flow analysis reflecting the build-out/sellout scenario; right?

Yes.

Q nd is it your testimony sitting here today that you don't know one way or the other whether it was necessary to do such an analysis for this project that was currently on hold and would generate cash flow in the future?

I would not know, no.

Q Would you agree at least that you understood that that was something that Mr. Mc rdle thought was necessary at the time?

I would have left that to Mr. Mc rdle. He's from Cushman and clearly knows that field very well.

Q Okay. But you understood based on your conversation with him that that was something that he was going to do; correct?

It looks like it from the e-mail, yes.

Q Okay. Let's go ahead and look at Exhibit 3204 in evidence. This is an e-mail dated September 13, 2013 from Mr. Mc rdle to you relating to the Briarcliff 71 units; right?

Yes, it appears that way.

Q nd he writes: "This is a follow up to confirm that you will be providing support from your brokers for the potential pricing of the 71 residential units."

Do you recall that you were going to get comps to pass along to Mr. Mc rdle to help with the pricing of the 71 residential units?

I don't. Cushman & Wakefield would certainly have more brokers than we do.

Q Well, when you -- when he indicates that you will be providing support from your brokers, meaning you --

Support. That's possible, yes.

Q Okay. He's talking about your brokers, not his brokers; right?

Yes. We didn't have any brokers on the project at that point, so I'm a little bit confused by what he's saying there, but --

Q Well, you had an in-house realty group called Trump International Realty, didn't you?

We did with main presence here in New York, but fair enough. I'm not discounting your point.

Q Do you recall that you had that group look for comps in the area to provide to Mr. Mc rdle?

I do not off the top of my head.

Q nd in the next sentence he says that -- actually, two sentences down, he says he's going to move forward with the discounted cash flow analysis and looks forward to the pricing and cost estimates from your team. Do you see that?

Yes.

Q Let's go ahead and look at Exhibit 3202, which is already in evidence.

Now, the bottom e-mail is from Kathy Kaye to you dated September 24, 2013. Ms. Kaye was in the Trump International Realty Group; correct?

That's correct.

Q nd she says "please see the attached for your review and comments." nd then if you flip the page you'll see she is attaching some listings from West -- from Westchester closings. Do you see that?

I do.

Q Does it appear then that you had Ms. Kaye from the Trump International Realty Group pull together some comps for you to then pass along to Mr. Mc rdle?

Yes, it does.

Q nd you do, in fact, forward the comps to Mr. Mc rdle in the e-mail above; right?

Yes.

Q Let's look at Exhibit 3201 already in evidence.

You'll see the bottom of page one is an e-mail from Mr. Mc rdle to you dated September 30, 2013, yes?

Yes.

Q nd he says to you "I'm prepared to share my valuation and conclusions with you. re you available to talk this afternoon or tomorrow morning." nd then you can respond you

can do 3:30. He says "perfect, I will call you."
nd so do you recall that you had a conversation in this time frame with Mr. Mc rdle where he shared with you his valuation conclusions for the 71 units at Briarcliff?
I do not recall.
Q Do you have any reason to doubt that that call happened as indicated in the e-mail exchange?
I don't want to speculate. It very well could have -- I just don't know sitting here ten years later.
Q Well, do you have any recollection of anything that happened that to your knowledge would have prevented that call from going forward?
I have very little recollection on this whole subject, so no.
Q Then the top e-mail is from Mr. Mc rdle to you on October 16, 2013 confirming his conversations with Ms. Dillon to finish but hold off sending the appraisal until further notice; right?
Yes.
Q Okay. Let's go ahead and look at Exhibit 1465, which is already in evidence. Page two of this e-mail, the top is an e-mail from Ms. Dillon to you -- to Mr. Mc rdle. Sorry.
Do you see that?
Yes, I do.
Q nd she says in her e-mail to Mr. Mc rdle, "I spoke to

Eric and he is aware that the more supportable value at this point is around 45 million." Do you see that?
I do.
Q nd then at the very end of that paragraph she says "Eric was pleased with the number." Do you see that?
I see that, yes.
Q Do you recall learning by October 16, 2013 of Mr. Mc rdle's value of 45 million understanding that that was the more supportable value in being pleased with that number; yes or no?
I don't recall.
Q Do you have any reason to doubt that what Ms. Dillon reports in this e-mail is accurate?
No, I don't. I don't Ms. Dillon.
Q Okay. The decision in mid October to have Mr. Mc rdle hold off on sending the appraisal, was that your decision?
It could have been.
Q Let's put up 719, the Jeff Supporting Data spreadsheet for 2014 and let's look at Row 284.
Mr. McConney notes here, 9/25/2013 per telephone conversation with Eric Trump "sellout is based on comps in the area." Do you see that?
I do.
MR. MER: nd if we could split the screen with Plaintiff's Exhibit 3202? nd you'll see -- that's the

bottom e-mail is the one from Ms. Kaye sending the comps. Do you see that?
Yes, I do.
Q nd her e-mail to you is dated September 24, 2013. So that's the day before the call noted by Mr. McConney with you about the sellout being based on comps in the area. Do you see that?
Yes.
Q So can we agree that that information was information that you provided to Mr. McConney based on what you had received from Ms. Kate and passed along to Mr. Mc rdle?
Not necessarily the dates.
Q The dates do line up, though, that the day before you had this call with Mr. McConney, you got the comps from Ms. Kaye; right?
Yes, it seems like these are again totally --
THE WITNESS: I want to respect Your Honor. I think this one needs just --
THE COURT: Go ahead.
THE WITNESS: I'll respect --
These are two totally different exercises, one of which I wasn't involved in clearly. It says asterisk 9/25/2013 per telephone conversation with Eric Trump sale of 71 mid rise units with that asterisk. nd yes I think those numbers are very well supportable, but this is totally different exercise. This has

to do with a conservation easement and that has to do with saleable square footage in incredibly luxurious units that would be built on a golf course. I'm trying to draw a parallel for you because I think you're conflating two very different topics and --
Q re you done? I just don't want to interrupt you.
THE COURT: He meant that seriously. It wasn't a dig at all.
I'm just trying to be as transparent as I possibly can that two completely different things, but yes.
Q Okay. The note by Mr. McConney involved the conversation with you, yes?
The asterisk is next to the asterisk, but yes, I'll concede.
Q nd that same note says "sellout is based on comps in the area." Yes?
It says "sellout is based on comps in the area."
Q nd the day before you received an e-mail from Ms. Kaye of the Trump International Realty Group providing comps which you then forwarded on to Mr. Mc rdle in connection with the 71 unit easement donation engagement; yes or no?
Yes.
Q nd we just looked at the fact that you -- that there was a decision to have Mr. Mc rdle hold off on sending the appraisal and that was as of October 19th or 16th of 2013.

MR. MER: We could put up 3201 just to confirm the date and let's keep up -- sorry -- the spreadsheet. Right.
Q So October of 2013 there is a decision to have Mr. Mc rdle hold off sending the appraisal; right?
Yes.
Q Was the decision to have Mr. Mc rdle hold off on sending the appraisal an effort to delay the creation of that document until after the 2013 statement was issued?
No.
MR. MER: Let's go ahead and pull up the 2017 Jeff Supporting Data spreadsheet, which is Plaintiff's Exhibit 742 in evidence and let's go to note 295.
Q nd this note says "November 17, 2015. Per telephone conversation with Eric Trump, leave value as is." Do you see that?
I do.
Q Do you have any reason to doubt the accuracy of Mr. McConney's note about this telephone conversation with you?
Not at all.
Q So you instructed Mr. McConney to leave the value as is in this call; correct?
Very likely nothing had changed on the project between those two years.
Q nd you gave this instruction to leave the value as is at a point in time where you were already made aware of

Mr. Mc rdle's $45 million valuation for his appraisal engagement; yes or no?
No.
Q So are you saying that as of November 17, 2015 -- well, we've established that as of November 17, 2015 you did know that Mr. Mc rdle had come up with a value of 45 million; right? Yes?
Yes.
Q Okay. nd that was knowledge you had when you told Mr. McConney in this call to leave the value as is; yes or no?
No.
Q Well, you had the knowledge then you had the call. Isn't that right?
I've testified pretty extensively to the fact that I've never seen this document. nd second of all, they're totally different exercises.
Q It's really not my question, Mr. Trump. I'm trying just to establish that you had a particular piece of knowledge prior to the date of this call. I think we've agreed that prior to November 17, 2015 you were aware of Mr. Mc rdle's $45 million value; yes?
Yes.
Q Let's leave it at that because I think the dates are things that the Court can take judicial notice of.
THE COURT: The dates will speak for themselves.
Q Now, Mr. Trump, based on all the e-mails we've been

reviewing, would you agree that you conferred on multiple occasions with Mr. Mc rdle in connection with appraisal engagements for Seven Springs and Briarcliff; yes or no?
Yes.
Q I'm going to play you some testimony from your deposition and then ask you some questions about it. It's page 198, line 10 to 199, line 20.
(Whereupon, there is a pause in the proceedings.)
MR. MER: Can we put up the text of that video clip, please? Let's go to page 199.
Q So this is from what we just played and I want to focus on your testimony starting at line six on this page that you really hadn't been involved in appraisal work on the Seven Springs property.
Mr. Trump, will you concede that your testimony was incorrect; yes or no?
I really hadn't been involved in the appraisal work on that property. No. I think that's an accurate statement. Sheri Dillon handled the vast majority of the appraisal work. Clearly, I made an introduction to our property manager. Clearly, I was on a few phone calls, but that was a six-month long process and you've pointed out four interactions that I had. I would stand by the statement that I don't remember Mc rdle well and certainly I was aware of it, but I don't think I was the main person involved or even considered very involved.

MR. KISE: So, Your Honor --
Q I didn't ask about main person.
MR. MER: What's your objection because I --
MR. KISE: Can I say it first?
MR. MER: No because I think we may need to excuse the witness and we can hash it out.
MR. KISE: re you running the courtroom or is the judge? I don't know why you're talking to me. I think the judge is running the courtroom.
MR. MER: I'm asking the judge to excuse the witness if we're going to have an objection.
MR. KISE: Or any objection standing objection.
THE COURT: Or a standing objection.
MR. KISE: ll I'm going to ask --
THE COURT: re you going to ask? It's not going to influence --
MR. KISE: I don't see how it could influence the witness. I don't see how any of this could influence the witness. nd they make speeches all the time, but at all events we've now -- Mr. mer's concerned about disruptions. We've now wasted a minute or two and I haven't even said what I'm objecting about.
THE COURT: Well, I think it's fair -- it's always fair to make sure what is about to be spoken or asked won't influence the witness because we can always take the witness

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out, but I'll accept your representation that what you're about to say or ask will not influence the witness.

MR. KISE: I don't see how it could. ll I'm going to say is you're constantly on this side of the table about time. I'm not sure what the purpose of all this back and forth is. The witness has testified -- he's testified about what he remembers right now today. Whether he remembered it in his deposition or not seems immaterial to the process at this point because Mr. mer's already gotten the answers that he wants and so now he's going to go back and play this again and go over the same answer. So it's a waste of time. It's asked and answered and asked and answered and asked and answered and we've been doing this all afternoon, so at some point it just needs to end. I don't see how that influences the witness. It should just influence the proceeding.

Transcript continues on the following page....

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THE COURT: Okay. Thank you for sharing that. Let's continue.

MR. MER: Thank you, your Honor.

Q I wasn't asking about whether I had -- whether principal or main person involved. I'm asking a very simple question based on all of the e-mails that we've been looking at, the calendar invites, the contacts you've had with Mr. Mc rdle, the comps you were sending him, will you concede that your testimony on line six and seven, that you really haven't been involved in appraisal work on this property was incorrect, yes or no?

No.

Q So you stand by your testimony at your deposition that you really haven't been involved in appraisal work on the Seven Springs property, yes?

To a -- to a small -- to a -- I was clearly involved, but to a very small point and I think I was very clear that I had very limited memory of Mr. Mc rdle. I testified -- and yes, I see your e-mails. 100 percent I made a couple of calls.

Q You say here you really haven't been involved and I'm trying to understand if you're standing by that testimony or if you're willing to acknowledge that you did have involvement --

MR. KISE: Objection. This is borderline harassment.

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THE COURT: sked and answered. He said he stands by it. You can make of that what you will.

MR. MER: Well, Your Honor, he said "I was clearly involved." He didn't stand by his testimony. That's in the transcript.

MR. ROBERT: You asked him directly if he stands by it and you asked him directly if he stands by it and he said yes.

MR. MER: nd then he said on line 16, "I was clearly involved."

THE COURT: I thought he said no.

MR. ROBERT: "I really hadn't been involved." You're now -- Mr. mer is now conflating what limited involvement Mr. Trump had which is consistent with he hadn't really been involved. He just said he had a few e-mails.

THE WITNESS: I really haven't --

THE COURT: When I said he said no, I was talking about a different --

MR. ROBERT: Sorry.

THE COURT: It was my confusion. ll right.

MR. ROBERT: Sorry, Your Honor.

THE COURT: If the question is do you stand by it, the earlier testimony on the screen, the answer is yes; am I correct?

THE WITNESS: Yes, Your Honor. I stand by --

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THE COURT: You stand by it, okay.

Q Let's look at line 16 when you testified at your deposition starting at line 16, that you don't focus on appraisals between a law firm and Cushman.

Will you concede that your testimony was incorrect based on all of the e-mails we've been looking at; yes or no?

I don't focus on appraisals between law firms and Cushman, no, I don't. That's not a focus of my day. I'm an operator. I am a construction guy. I build projects. I don't focus on appraisals, no.

Q nd let's look at page 198, line 12. When you testified at your deposition, starting at line 12, that you recognized David Mc rdle's name only very vaguely, would you concede that you had significant communications back and forth and interactions with Mr. Mc rdle on the appraisal engagement for both Seven Springs and Briarcliff; yes or no?

MR. KISE: Objection; "significant."

No, there's a handful of e-mails from well over ten years ago and I don't remember the person's name. I hardly remember the person's name. I stick by that 100 percent.

THE COURT: The language doesn't have to be the exact same. Objection overruled and he answered it anyway.

Q I want to fastforward to 2021. Were you on a video conference call in the fall of 2021 to discuss the 2021 Statement of Financial Condition that was in the process then of

being drafted?
I don't remember.
Q If I suggested that there was such a video call that included your brother Donald Trump, Jr., Patrick Birney, Jeffrey McConney and Ray Flores, does that refresh your recollection?
It's possible. I -- I'm on a thousand calls a day. I just don't remember.
Q Let me show you some testimony from Mr. Birney, Patrick Birney to see if it can further refresh your recollection. Page 1390, line 8 to 1391, line 12:
"QUESTION: The meeting that I asked you about, how many participants were in the meeting?
" NSWER: I worked remote for 2021, so there were a lot of these calls. So can you be more specific about which meeting you're referring to?
"QUESTION: Sure. Specifically a meeting over Google Meet about the 2021 Statement of Financial Condition.
" NSWER: There were multiple meetings in 2021 as I was remote.
"QUESTION: Were there any meetings about the 2021 Statement of Financial Condition in which Donald Trump, Jr. and Eric Trump participated?
" NSWER: Yes.
"QUESTION: So about -- speaking about the meeting, how many other participants were there other than

those two people?
" NSWER: Myself, lan Garten, Ray Flores, Jeffrey McConney.
"QUESTION: llen Weisselberg was not in the meeting?
" NSWER: I don't think llen Weisselberg was in that meeting.
"QUESTION: pproximately when did this Google Meeting occur?
" NSWER: Probably in October of 2021.
"QUESTION: During the Google Meeting that we are talking about now, did you share any information with the other participants?
THE WITNESS: Yes.
"QUESTION: What did you share?
" NSWER: I shared documents on the screen.
"QUESTION: nd what were those documents?
" NSWER: I believe I toggled between a few documents during the call. One I think was a Statement of Financial Condition summary. One was the supporting data street and we may have seen the Word document which would have been the -- a draft of the final Statement of Financial Condition."
Does seeing that testimony from Mr. Birney jog your memory about this Google Meeting call and whether you were

on it?
It does not.
Q One more clip from Mr. Birney on this meeting. It's page 1406:1 to 1407:4:
"QUESTION: So would it refresh your recollection if we pulled up some of your prior testimony, pages 1194 to 1195?
" NSWER: Sure.
"QUESTION: Starting at line 17. So I'm trying to understand the change is discussed about golf club valuation method. You described it as a consensus decision among you, Mr. Garten and Mr. Flores, correct?
" NSWER: Yes.
"QUESTION: Does this decision need to be approved by someone else at the company who is superior to the three of you after it's made in your group consensus?
" NSWER: I don't know if there was an official approval. I think that's why it brought up the change in methodology in that call with Don and Eric."
nd I just said, "okay, continue your answer."
"So that they were at least aware."
"Does that refresh your recollection as to whether you wanted to advise Donald Trump, Jr. and Eric Trump about the change in golf course methodology that occurred in 2021?"

" NSWER: I discussed it. I don't know if I wanted to discuss it. Can you ask the question in a different way maybe?
"QUESTION: Sure. We can look at your testimony. It says, "I think that's why it brought up the change in methodology in that call with Don and Eric, so that they were at least aware." Why did you want to make them at least aware of that change?
" NSWER: Because it was a, as you put it, significant change to the year before."
Does that additional testimony from Mr. Birney about needing to discuss with you and your brother the significant change to the golf course methodology that occurred in 2021 jog your recollection of this video conference call?
It doesn't. I would have left that to the finance team.
Q You considered Patrick Birney to be a solid guy, didn't you?
I like Patrick Birney very much.
Q nd you considered him to be a solid guy, right?
THE COURT: I think that's what he just said, right?
MR. MER: Well, he didn't adopt those exact words.
THE WITNESS: Your Honor, I was looking for help on

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that one.
Yes, I do.
THE COURT: You have to look up, not sideways for help.
Q nd you'll agree from his testimony here under oath at this trial that he said you and your brother were on the video call, right?
gain, I have no reason to doubt Pat. I do believe he's a very good guy and it's -- it's possible. I would have left the details to methodology to somebody like him, but I could have been on a phone call.
Q nd you'll agree he says the purpose of the call was to make you and your brother aware of the change in the methodology in the change in the golf courses, right?
Possibly. I just don't remember anything about this phone call, so...
Q I'm asking you if you remember what you read on the screen and heard just a minute ago.
Yes, I do.
Q He testified that the purpose of the call was to make you and your brother aware of the change in the methodology for the golf courses, right?
Presumably. I'll take your word for it.
Q I don't want you to take my word for it. You heard his testimony. Can we agree that based on his testimony, he says

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the purpose of the call was to advise you and your brother of the change in methodology for the golf courses in 2021, right?
It seems like that's possible, yes.
MR. MER: Let's go ahead and put up the 2021 Jeff Supporting Data which is Exhibit 1352 in evidence. Let's go to Row 289.
MR. ROBERT: Just a point of clarification. This would be Birney's supporting data if it is 2021, not Jeff's.
MR. MER: I'll take that correction. Why don't we just call it the supporting data.
MR. ROBERT: Fair enough.
MR. MER: It is in evidence, so it is what it is.
Q Let's look at Row 289. That's where the section for Briarcliff begins. Do you see that?
Yes, I do.
Q If you look at Row 306, there's a note in that row and it's -- it says, "Upon the advice and guidance of Marcus and Millichap, golf course industry experts, a normal golf course with a negative EBITD trades at two to three times gross revenue. We took an average of three times gross revenue and net fixed assets."
Do you see that?
I see that, yes.
Q nd we've had testimony from Mr. Flores, others that there was a change in methodology for 2021 based on the advice

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and guidance that's referenced in this note. So can you accept that?
I mean, if you tell me that's true. I don't know. This is very foreign to me, but if you tell me that's the testimony, I'll believe you.
THE COURT: I may have to swear him in first if he's going to testify.
Q nd does seeing this note about the advice from Marcus & Millichap and this being the basis for a change in the way the golf courses were valued, does that trigger a recollection for you about being on a call where that change in methodology was discussed; yes or no?
It does not.
Q nd if we look at Row 363, which is Colts Neck, it refers to "advice and guidance from Marcus & Millichap for a course with a consistently positive EBITD trading at six to eight times EBITD , but the last few purchases have been nine to ten times based on the quality of Trump courses could sell at ten times EBITD ."
gain, we've had testimony that this is the basis for a change in methodology for those courses that consistently had positive EBITD . Does that trigger any recollection of being involved in a call in fall of 2021 where the change -- this change in methodology was discussed?
It does not.

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Q Now, just to orient us in time with respect to the October 2021 video call that Mr. Birney testified about, as of October 2021, you certainly knew about the ttorney General's investigation that led to this enforcement action, right?
Yes, I did.
Q In fact, a year earlier, you sat for an investigative interview with attorneys from the ttorney General's office where you provided testimony under oath, right?
Yes, I did.
Q nd on dozens of occasions during that interview, you invoked your --
MR. ROBERT: Objection.
THE COURT: Go ahead.
MR. ROBERT: Mr. mer is about to get into something that is completely irrelevant and immaterial in an attempt to sensationalize something that's not really sensational. Maybe you want to excuse the witness and we deal with it, but he is about to get into the fact that two years ago when Mr. Trump was interviewed he invoked his Fifth mendment rights and then two years later sat for a deposition. It's totally improper.
THE COURT: Is that what you were about to do?
MR. MER: I'm happy to explain why it is relevant.
THE COURT: Should we excuse the witness?
MR. ROBERT: It's absolutely irrelevant.

THE COURT: If it is irrelevant, do we have to excuse the witness?

MR. ROBERT: I don't believe so.

MR. MER: I don't think it is irrelevant.

MR. ROBERT: If you want to --

THE COURT: So do you want to explain the relevance?

MR. MER: Sure. I think it's relevant to this witness' recollection or lack of recollection of a phone call that's discussing the subject of something he knows is an ongoing ttorney General investigation where the call is about the very subject of that investigation where he sat for an interview under oath and even invoked his right against self-incrimination.

I think it goes to his credibility as to whether or not he recalls this -- this Google Meeting call that was less than three years ago, Your Honor. So yes, it is relevant to his credibility.

MR. ROBERT: It is absolutely not. Mr. Trump availed himself of a constitutional right that he has because at that point, it was the appropriate thing to do. The ttorney General then noticed him for a deposition in this case. He sat literally for seven hours on the nose because I remember at seven hours on the nose, we ended it. He answered every question. He did not invoke his

constitutional right, which he could have, and this line of questioning is improper; but it was dealt with just so that at the end of the day, the stories would be that the issue that Mr. Trump invoked his Fifth mendment right two years ago is what's going to be the news tonight. It is completely irrelevant. It's completely prejudicial and this line of questioning needs to stop.

MR. KISE: One other issue --

THE COURT: I'll let --

MR. KISE: -- just to Mr. mer only has to respond once. It is funny he's not interested in the witness being excused even though we asked three times. Here is the thing. So all of these conversations that we're talking about center around a privileged communication. We've been through this before. Mr. Garten was on the call, so the substance of what was discussed would have been privileged anyway and they've continued to invade that privilege.

Second, anything that was done or decided as a result of that ruling they did as part of the subsequent remedial measures as a result of the investigation. So again, none of this should be really coming in at all. ny decision that was made as a result of the awareness of an investigation would be subsequent remedial measures and it shouldn't be admitted at all.

The witness has said he has no reason to doubt that

he was on the call, but he doesn't remember the call. He testified about the call. The fact that he testified before is established. The fact that he was subpoenaed and testified in the special proceeding in the investigation is established. So I don't know what else other than sensationalizing is the issue here other than either invading the attorney-client privilege, getting into subsequent remedial measures, or just harassing the witness. I'll wait again to get the note that you have from Ms. Greenfield. You may have a question for me. Maybe it is about dinner.

MR. MER: Can I mention one thing, Your Honor?

THE COURT: In a second.

MR. MER: Okay.

THE COURT: Mr. Kise, all joking aside, and even I like to leaven the proceedings, do not refer to my staff again. person sitting alongside of me is my principal law clerk. She's a civil servant. She's doing what I ask her to do, which is help me process cases and decide them correctly.

Sometimes I think there may be a bit of misogyny the fact that you keep referring to my female principal law clerk. If there is any further reference to anyone on my staff, and I don't have a big staff, I have about three people, I will consider expanding the gag order to include

the attorneys including yourself. That being said, why don't we just break for the day because it is almost 4:30. I promised Mr. mer --

MR. KISE: May I respond to that on the record briefly?

THE COURT: Respond to that and then we will get to Mr. mer.

MR. KISE: Briefly. I just want to be clear. I have my own constitutional First mendment rights. I have the right to represent my client in a courtroom. I have the right to observe -- make points in the record about observations that I make if there is bias in the proceeding that my client perceives, I have to advance that. If there is reason for that bias, then that's an issue in the proceeding.

I do often feel -- frequently, I do feel like truly that I'm fighting two adversaries and I'm not trying to impugn anyone. I'm trying to point out as a lawyer and I think it is fair comment as a lawyer. I understand what your ruling is, but I have to respond to this because this is important.

So I feel like I'm sitting here and I have to respond to Mr. mer or their arguments. I hear what those arguments are and I get to see what those arguments are and we get to have our engagement, but then there is someone

else who is sending you information on a very, very frequent basis. I think yesterday we counted maybe 30 times, 40 times and so I don't get to understand what this is and those -- and I'm not --

THE COURT: That's right. You don't --

MR. KISE: I'm not trying to invade it. ll I'm trying to say is that gives off -- respectfully that gives off the appearance of impropriety and I'm entitled to at least make a record about that. It is not impugning anyone. It does give off the appearance of impropriety particularly if it is an individual or individuals that have a different view of the case than we do, have a different political background or political view than we do. nd so those are relevant issues for Your Honor's consideration.

gain, this is why I brought up on the constitutional -- I asked you to reconsider the gag order on the constitutional basis because I think it raises much more serious issues and I don't really want to go there and I'm trying not to; but at some level, I have to at least have fair comment on what I think is biased. I made my record and I understand Your Honor's ruling.

MS. H BB : By the way, I'm happy to make the record for Mr. Kise, so that none of my team members are accused of misogyny. I assure you that's not the issue. I have the same, frankly, issues with the person sitting on

the bench and I've made that clear on the record. nd frankly, it is not only distracting, but it is insulting.

Your Honor, I respect your position, but I do feel like Mr. Kise that your position is often what you are given in notes and we don't have a clue what is going on; but we do know that there is a nod of the head by you when those notes are received and then decisions are made.

We have to make a record of it because, frankly, it's become part, and as I have said for three years for me personally, a part of the record and I'm not going to stand by and allow it to happen. I'm not going to let someone who's my teammate be called a misogynist because he is pointing out something, frankly, that I can do myself. So I will make my own record. It is inappropriate.

nd I do have to say one other thing to Mr. mer on the record and again, I'm happy to let Mr. Trump off the stand, but I do think it is inappropriate that he's trying to use something and make it appear as impeachment evidence and it is not. Mr. Trump has been very consistent. He doesn't like his answers, so he keeps trying to impeach my witness here and all he's doing is showing things that, frankly, show that he is consistent.

He doesn't have a recollection. If he has a recollection now, he'll tell you; but by showing him somebody else's transcript and telling him that a video

conference happened and then asking him if he remembers it and he's going to say, "No, I don't remember it." He's not disagreeing with Mr. Birney, but he doesn't remember it.

We need to move on. We've been here now all day and gotten, frankly, not very far because the questions are repetitive, asked and answered, asked and answered. He's trying to elicit a response that's not accurate and Mr. Trump is not going to give him a response that's not accurate. He doesn't remember, he doesn't remember. We need to move on. We will be here well into next week if we do not move on.

MR. ROBERT: May I simply say that I join in my colleagues' comments.

MR. MER: Can I make a few points, Your Honor?

THE COURT: fter me.

MR. MER: Okay.

THE COURT: Mr. Kise and the rest of the team, I have an absolute right, absolute, unfettered right to get advice from my principal law clerk. It actually goes a little broader than that, but at the very least from my principal law clerk. There is no First mendment value that I can see referring to her particularly when making things up and that's not you, that's somebody else. So weighing the First mendment right against the safety of my staff, we know what's going on out there in the world, I think your

points are not well-taken about that.

In terms of the further -- on the merits here, some research has shown that subsequent remedial measures is only appropriate in personal injury cases. I will refer to Rule 4.19. I believe that's of the -- might be out of the benchbook, whatever.

nd now, let's let Mr. mer, who is very anxious to talk, have a few words.

MR. MER: Number one, I'm entitled to question the witness' -- the credibility of the witness' claim that he doesn't recall this video conference meeting that took place two years ago. I'm entitled to question that. I don't have to accept it and I can elicit evidence that puts in doubt his claimed lack of recollection.

Second, as to Ms. Habba's comment, this witness' testimony is great and I'm very happy with it, and so this is not about not liking his testimony. I think his testimony is extremely favorable to our case and I welcome it.

nd third, this witness' investigative interview and his invocation of his Fifth mendment right has been in the news for years. If you want to Google it, you'll see that there are many articles that count the number of times he invoked his right against self-incrimination at that interview. So this is not about bringing to light something

that has, heretofore, never been shared with the public.

Those are my comments. I would like to continue tomorrow morning and I will just use this point to question the credibility of a claim that a call two years ago involving an ongoing investigation where he sat for an interview is simply not something that is plausible and that's my right, and the Court can do with it what it will.

MR. KISE: Your Honor, then, just briefly on your initial point, I do disagree, respectfully. I have to on behalf of my client comment on what I see going on in the courtroom that I think could prejudice or bias the proceeding. I don't -- I don't see what is being passed to you, so it is not possible for me to know.

THE COURT: That's right. You don't see it. That's -- I'm going to pound the table -- confidential communications from my principal law clerk. bsolute right to it and you don't have any right to see it or question it.

MR. KISE: I certainly have a right to question what is perceived by my client as bias. I do have that. I have to make that record. I do have that. That's just what lawyers do. I mean, I have to make the record. I don't think, respectfully, there is any security concern. We're talking about observations of what's happening in open court.

Everyone in this room can see what I'm seeing, so

it is not a security issue. I'm not commenting inappropriately. I'm directing my comments to you and only to you, but I have to make a record if I perceive that there is potential bias.

THE COURT: How do you perceive there is potential bias by notes being passed back and forth? Don't you and Mr. Robert talk to each other?

MR. KISE: Of course, we talk to each other and we're advocates, so we are -- yes, we are biased, so it is the same principle. It's the same principle. Ongoing interaction, you can receive advice, of course, from a law secretary. I mean, you are a judge, but ongoing interaction in the course of the proceeding where it appears as though it is almost co-judging taking place, that's the perception from out here.

That may not be what you're doing. I can't tell what you're doing, but that's what the perception is, so we have to at least make our record to comment on it and again, I understand your ruling. No one is trying to impugn anyone.

I'm not a misogynist. I have -- I'm very happily married and I have a 17-year-old daughter, so I really have no issues there and so I reject that squarely. My point is and I think -- look, all I want to say is what I've said, which is we have to make our record. We perceive there is

bias. There have been public commentaries about political persuasions of people involved in the proceeding. I don't know. So I think it is fair for me to at least make the record and comment. It's -- this is the real point.

When they're speaking, notes don't get passed. That's really the issue, is that when the ttorney General is making arguments, there aren't notes being passed for you to consider. They -- 95 percent. So with us, whenever I'm speaking or -- yesterday, I saw it the best because I stepped out to go to that hearing beforehand. I'm watching on the closed circuit TV and there, you can see what's happening differently than you can see here.

nd so every time Mr. Suarez was making a point and there was a dialog, there would be notes passed to you. When the ttorney General was speaking, there would be no notes passed to you. So that's the perception of bias. Whether it is real or not, I have to make my record. So that's all I'm doing. I'm making my record. I'm doing it respectfully. I haven't made any comments outside this courtroom about anyone and I don't intend to. So all I'm doing is just making a record.

I understand Your Honor's point and I will abide by Your Honor's ruling, but you can't keep lawyers from being advocates. I think that that's over the line, respectfully.

THE COURT: I guess it is time to go. Ten o'clock

tomorrow morning.

I direct the witness, witness, please don't talk to anybody about your testimony, about this case, or anything related to it because you'll still be a witness tomorrow.

Thank you, everyone.

(Witness excused.)

(Whereupon, the trial was adjourned to November 3, 2023 at 10:00 a.m.)

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In The Matter Of:

PEOPLE OF THE ST TE OF NEW YORK v.
DON LD J. TRUMP, et al.

ERIC TRUMP
November 3, 2023

NICOLE C. ROBINSON

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : P RT 37
---------- X
PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

-against- Index No. 452564/2022

DON LD J. TRUMP; DON LD TRUMP, JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY MCCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC.; ND SEVEN SPRINGS, LLC,

Defendants.
---------- X

60 Centre Street
New York, New York 10013
November 3, 2023

B E F O R E:

HONOR BLE RTHUR F. ENGORON,
Justice, Supreme Court

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THE COURT OFFICER: ll rise. Part 37 is now in session. The Honorable Judge rthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There is absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: We have some photographers. Tommy does that from memory. He's not holding up a script card.

Good morning, everybody.

Yesterday, Chris Kise noted in the morning that I bound up the steps I'm going too fast. I'm not sure you noticed as the day wears on I go up slower and slower, but.

MR. KISE: You do.

THE COURT: By the same token, as the day wears on, I go down faster and faster. It kind of balances out.

Not yesterday, but several days ago, I believe that one or two or all of the defense lawyers said that they had never seen a judge be so intertwined with his or her law clerk basically passing messages. I mentioned that to the judge for whom I was a law clerk for many years, he reminded me of something that happened decades ago. There was an elected Supreme Court judge, which is what I am, in this very building, and I'll give away the genders. He was very well respected and he had this very high profile case. If I told you the name of the plaintiff and I told you the name

of the defendant everybody in this room would know both of them. Now you're really scratching your heads, right?

The law clerk was running for judge and the campaign literature -- the campaign literature said, I'll almost quote this exactly -- I'll put on a little bit of the act. "I sit on the bench everyday with the judge and I whisper in his ear and I tell him how to rule."

Now, of course we haven't seen that, fortunately. The law clerk was elected, is still a judge. This is decades ago and so just to the claim that you've never seen anything like this, apparently that's been even more extreme. I didn't see this happen. I'm assuming that's what the story was and the judge never said no, she doesn't sit up there and tell me how to rule.

So -- but to finish up, I hope I made myself clear yesterday. Okay.

MR. KISE: s too, Judge, I mean, I certainly heard you yesterday, yes.

THE COURT: Okay.

MR. KISE: I just don't know we were directed to do anything specific.

THE COURT: Well, how about informally. Unless there is some real reason that I haven't seen any, please do not refer to any members of my staff.

MR. KISE: So how do we then make -- how does the

Court propose we make our record about things that we observe in open court happening?

THE COURT: Well, I let you do that the other day, yesterday, whenever it was.

MR. KISE: You did, right. I just want to make sure we're allowed to do that. I don't need to reference names or specifics, but to the extent there are issues that arise based on observations that we have, we have to make that record because, as you know, all that is left in the record is the written transcript. There is no video, there is no recordings and all that probably fortunately for all of us.

THE COURT: Right. Well, let me ask you this: Do you feel the need to make a further record as things stand now?

MR. KISE: I believe so, Your Honor. I mean, to the extent that there are perceptions of bias there are things that we as lawyers -- and I don't want to speak for my colleagues, but to the extent there are things that we observe that are taking place that create either the appearance of bias or the appearance of impropriety in our minds, then I think we have to take that up. I think it's our obligation as lawyers to make mention of these things even if it's just a brief mention.

We all -- it's like any other issue in the case if

I have a legal issue. We were respectful to the Court and we don't belabor the issues, but we have to at least mark it, otherwise it's waived.

THE COURT: Well, I promise not to pound the table again and the bench. I have an absolute unrestricted, unfettered right to get advice from my principal law clerk or assistant law clerk. How that shows bias somehow, I don't see it. I mean, but if you want to say something now, say it. But I don't -- I don't want to endanger the safety of my staff. Maybe I'm being overly sensitive or overheated or cautious. I don't think so. I worry about this.

nd notice you could say whatever you want about me, right? I have no gag order about me and that has been taken advantage of -- not taken advantage of in the sense of anything improper, but, you know, I think that's what -- that's where there would be any appearance of bias in me and I cut this case right down the middle.

nd I will respond to some of the earlier statements that oh, I never interrupt or rule against the ttorney General. That's just not so. nd to the extent that one of your team might occasionally have said I might restrict the amount of time you have because I think you're wasting time, I have the right to do that. It's not because it's one side or the other. Right down the middle.

nd I said previously that I don't regard this case

as political. I don't. To me, it's just a case about Executive Law Section 6312 and now about those other statutes. So I said enough.

You want to make a record, but please be careful.

MR. KISE: I always am.

I think we're treading in a dangerous area here because what we perceive as counsel to be bias we're certainly entitled to raise those concerns. I think we have to raise those concerns as lawyers.

The Rules of Judicial Conduct which I know you're well aware of maintain that the Court is to act in a way that promotes public confidence in the integrity and impartiality of the system. nd so impartiality, I believe in the rules is defined as denoting the absence of bias or prejudice, the absence of it.

So to the extent there is the potential for bias, that's certainly something that's relevant. I mean, the entire country, if not the world, is watching this proceeding and they are looking at this. The United States heretofore has been a model for the integrity and impartiality of the system since its founding. Nothing we do here should create any appearance that the adherence to those principles has wavered and so to the extent that there is even the perception of bias that's something that needs to be addressed and addressed in the record because we have

no other way to address it other than in the record.

Yes, as a judge you're entitled to receive input, but if you're receiving input from someone who has potentially demonstrable bias or at least there is a question about that and the manner in which that's taking place we have to at least make that record. That is our right.

Now, in the view of President Trump, and I think to some extent the view of counsel here, if not to a large extent, our observations are what we say. You're free to disagree as you've done, but I think the record -- and this is the importance of making this record, demonstrates that we're getting hurried up, we're getting told to move on, we're getting put on the clock, we're -- the rulings are frequently, if not inordinately, against us on almost every major issue. nd so we're also, as I said yesterday, I certainly am often thinking I'm arguing against two adversaries, not one. I'm debating with the government and then I'm debating with someone who is providing input to you on a regular, immediate basis.

THE COURT: Hold on. You say you need to make a record. You've said all this. Those exact words basically.

MR. KISE: I'm not adding words.

So as I understand it this morning, there is a new story out about particular political partisan contributions

that have been made by certain members of your staff; that there was a complaint made. It's public and on the web. There was a complaint made about this. It was addressed to Your Honor's attention on October 3rd, the very same day the gag order was entered and it raises questions of impartiality. t least from what I see this morning it raises questions of impartiality.

nd there are specific judicial cannons that prohibit campaign contributions and I don't know anything other than I saw this story this morning, let me be clear on that. But there are specific provisions that the Court is to make sure that the Court and -- I'll define the Court broadly to include the staff so I'm not making that interchangeably because I know Your Honor doesn't want me to be specific about any individual or persons, but that prohibit contributions, that prohibit certain partisan political activity by members of the Court. nd this complaint that was filed and the news coverage of it at least calls into question that particular cannon. I believe it's Section 100.5 C2 of the rules governing judicial conduct.

There are several judicial ethics opinions, 10-76, 07-11 and 97-103, all of which address this particular issue. gain, I'm not weighing the facts of whether something has happened or hasn't happened. I'm just stating

to the Court what is being reported and what has been reported as being presented to this Court on October 3rd, the same day as the gag order was entered. I don't know whether that's been considered or whether it's been ignored, but certainly it forms at least in my mind a basis for raising a question of potential bias. I think it's a legitimate question that needs to be addressed.

The fact that we found out about it -- that I found out about it reading it on, you know, in the news, raises additional questions about the appearance of impropriety. Whether or not sustainable, it certainly raises the issue.

President Trump, as you know, was here and purportedly made a statement about the same sort of bias outside. I won't get into the back and forth that took place about who he was speaking about, but he's purportedly making statements about someone who, by your own definition, is alongside of you having bias and now there is some allegation that maybe there is merit to that.

nd to the extent there is merit to that, then it's something that needs to be addressed. nd it is a fair conclusion that warnings to Counsel, gag orders on parties -- we're not allowed to even mention these subjects. It's a fair conclusion to be drawn that the purpose of that is to silence any allegation of bias. It's to silence any challenge to any notion of impartiality and in a case that

is this highly watched, I don't think that the systemically we can survive with those kinds of -- those kinds of issues. I mean, the constitutional rights and protections that are preserved to all in this country are at their peak when you're dealing with someone who might not be popular, might be someone who is controversial. nd so in a case like this it's essential that we take real care to adhere as closely as possible to those cannons and I think it's incumbent upon the lawyers to raise these issues.

I think the security concerns as you've heard me say I understand you're concerned, but I think given what just happened that photographers come into the Court and they take pictures of the open bench, all we're commenting on -- by the way, as I understand it, I never knew this before. s you know, I'm from Florida. Where we had open courts for 40, 50 years, TV cameras. Here, apparently, it's a crime to allow photographers into the courtroom and take pictures in a proceeding like this. I'm not an expert on this, I just know that -- so if the security concerns are that heightened, I'm straining to find the rationale that squares both.

I think that if the allegations that have been out in the media have any substance to them and I'm not commenting on whether they do or not, but if they do then I think -- and we'll know more I guess in the coming days. If

Your Honor was aware of this on October 3rd when this random individual apparently filed some complaint and sent it to the Court and no action was taken and no notice was given to Counsel and nothing was addressed, then I think the defense will have to give serious consideration to seeking a mistrial because of the -- as you say, the continuous input if there is someone that's biased.

gain, I'm not the prejudging outcome here and I want to be very careful to note that, but since you've raised the issue of how we make our record, I mean, perhaps we make our record by just saying the Court has done X or the Court has done Y, the Court has accepted a note without any mention of any individual, without any mention of staff, but unfortunately, given the clarity of the rules of judicial conduct, the gravity of what has been reported and the significance of these proceedings to our merican democracy it's incumbent upon us as lawyers and I will say respectfully to the Court to take this seriously. nd I'm not suggesting that you don't. Let me be clear, but I think we all need to take this very seriously because the entire world is watching and none of us can afford to misstep.

I have always and will continue to address my comments to you, the Court, but I have to be allowed as a lawyer to raise issues that are obvious in open court that everyone in this room can watch and see.

nd I notice that the closed circuit camera now -- after my mention has now been adjusted so that it's much more difficult to see if notes are being passed. It may just be that somebody bumped the camera on the TV screen. I do that at home frequently nudging things, but we need to take care here, respectfully, to avoid any appearance.

The allegations that I looked at in the news this morning gave me some concern and certainly gave me some thought that there is at least a plausible basis to have to raise considerations of bias, particularly when you're getting input on an ongoing basis. nd I feel, as I have said, that I'm often debating with two adversaries.

THE COURT: Yes, you've already said that.

MR. KISE: That's it. But I'll leave it there, Your Honor, and I appreciate you allowing me to make the record.

MR. MER: Your Honor, I just have very four very quick points.

THE COURT: Sure.

MR. MER: The first is --

THE COURT: You expect me to let you make a record?

MR. KISE: For once I'm not objecting to Mr. mer's comments.

MR. MER: Well, you haven't heard them yet.

The notion that bias can be based on the number of

notes being passed between a clerk and a judge and whether there are more notes being passed when one side's witness is on the stand versus another is a position I've never heard of and I think is completely frivolous. That's our position. I've never heard that and I don't think it has any merit.

Bias. It's clear from the case law can only be established by extrajudicial conduct. You can not establish bias based on decisions that a judge makes or rulings on evidence that a judge makes during the course of a trial. If that were the case, Your Honor, every time a judge issues a partial summary judgment decision against one side then the judge would have to recuse himself or herself. That's not the law. Clearly it's not.

nd this Court has already issued a summary judgment decision that makes certain rulings and you cannot base a -- an argument or bias on rulings during the course of the case.

No party, no party has the right to be privy to the internal deliberations of a chambers. That's absolutely clear and that includes knowing when and how many notes are being passed one way or the other.

nd finally, and I would implore you to please, you know, compel that if the other side has evidence of extrajudicial conduct that they believe is a basis for

recusal or a motion for a mistrial, make a motion on notice with papers and put in your evidence and let's not waste time during the trial with long speeches. There is a process to follow. It's making a motion on notice and that's what should happen and we're just wasting a lot of time with speeches when if they really have a basis, put it in motion papers. They can appeal it, they can do whatever they want with it, but this is just a waste of time, Your Honor.

MR. KISE: Your Honor, just very briefly because Mr. mer has now mentioned more specifically what I was referring to. Perhaps I was not transparent.

The news this morning does in fact relate to extrajudicial conduct specifically and it makes specific allegations about specific extrajudicial conduct that violates Section 100.5 C2 of the rules governing judicial conduct with respect to contributions to partisan political activity.

I -- since I don't know other than the news report, I haven't investigated, I haven't looked into anything other than what I'm saying, I'm not prepared to make a motion, but I did tell the Court just now that on Monday we may if this develops further, but I think it's incumbent to make the record. This information about extrajudicial conduct --

THE COURT: It's not information. It's an

allegation. I don't even know what you're talking about, but I'll respond later.

MR. KISE: The allegation --

THE COURT: Thank you.

MR. KISE: -- was made and apparently delivered to the Court and that's something that has been brought to our attention so we have to raise it.

MR. W LL CE: I'm sorry to interrupt. Mr. Wallace. Can I just ask what is the report you're discussing? Where does it appear?

MR. KISE: I'm not the Internet person. I want to say it's on -- hold on. I want to say it's on Breitbart maybe, but I don't know. I don't know. I think it's on Breitbart. It's on a news outlet. We get pummeled with news information.

In all events, I've made the record and I appreciate you allowing me to make the record. I do take the matter seriously and we're not just wasting time as Mr. mer just said. These are important matters and they deserve at least to be heard and you have allowed that. Thank you, Judge.

THE COURT: Well, I agree with Mr. mer's points. s to Mr. Kise, I'll respond, not to everything. If I don't respond to something, doesn't mean I accept it or agree with it. You covered a lot of ground.

First of all, this idea that somebody had notified me, what was that, on October 3rd or --

MR. KISE: What I understand, yes.

THE COURT: bsolutely untrue, okay. bsolutely untrue. I don't remember and my memory is good enough to remember whether I would have received such an allegation, so that's that.

Secondly, I have no idea until you said Breitbart what this news allegation is. I'll let everybody in the room decide what they think of Breitbart.

Third, having gotten myself elected twice -- actually, three times, I'm not an expert on political fundraising campaign contributions. When a non-judge or a judge is running for office there are window periods -- I won't make a whole lecture because I couldn't. I think it's nine months before and six months after you're allowed to spend money. Okay, neither of us is an expert.

So I'm sorry we've descended to this level where an allegation that the first part I know is untrue or at least I'm 99 percent sure is untrue and the second part what I didn't report today, I don't know. I can't comment.

It's a shame we've descended to this level. I totally agree the world is watching. I've gotten, you know, a sense that it's not just the country. It's the world.

s for the camera being moved, I was vaguely aware

that Rob, the tech person, was switching the angle of the camera. Never occurred to me that it could have anything to do with what we're discussing today or why it was.

So I just want to move forward with the trial. I just want to do the best job I can do. I want to be straight down the middle. I don't regard this as political. It's a trial about Executive Law 6312 and the other second through seventh cause of action provisions.

So I hope we've all said what we feel like we need to say. nything else?

Okay. Mr. mer, would you like to continue your examination?

MR. MER: I would. We would like to recall back to the stand Eric Trump.

(Whereupon, the witness approaches the witness stand.)

THE COURT: Morning. I'll remind the witness that he's still under oath, as I always do.

nd let's proceed.

CONTINUED DIRECT EX MIN TION

BY MR. MER:

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

I do.

Q nd 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?

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 ttorney General's investigation that led to this enforcement action; correct?

Yes. I would have been working with legal counsel.

Q nd you knew that the investigation focused on the way assets were being valued in your father's Statement of Financial Condition; yes?

bsolutely, yes.

Q nd a year before that call took place you sat for an interview in connection with the ttorney General's investigation where you provided testimony under oath in response to questions; right?

That's correct.

Q nd those questions were about the Statement of Financial Condition as well as other matters; correct?

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 ttorney General investigation that you were aware of at the time; is that right?

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?

Mr. mer, I --

Q Yes or no?

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?

I don't remember it.

MR. ROBERT: Objection. sked and answered.

I don't remember a specific call three years ago, no.

THE COURT: Let's move on.

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E. Trump - Plaintiff - direct (mer)

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. MER: Let's go ahead and pull up the testimony. It's page 3376, line 13 to 3377, 5.

Q nd 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?

Yes.

Transcript continues on the following page....

JCL

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Q nd if you go down to the next page and you again emphasize that they are two very different topics; is that right?

For the reason I noted above, yes.

Q Okay. Let's look at Plaintiff's Exhibit 3196 which is already in evidence. This is an e-mail exchange from David -- this is an e-mail from David Mc rdle to a consultant that he testified he reached out to on September 13, 2013 related to Briarcliff and you are not on this e-mail, but it does reference you.

So I want to just ask you about the second to last sentence of that first paragraph. Mr. Mc rdle said to his consultant, "of Course, Eric has lofty ideas on value and assumes $1,000 plus price PSF, per square-foot, is no problem." Do you see that?

I do, and I think the market today would show that that would be --

THE COURT: Wait. Wait. The question was just do you see that. One step at a time.

Yes.

Q nd do you have any reason to doubt that Mr. Mc rdle is accurately reflecting what you told him about your ideas on value?

I think $1,000 a square-foot would absolutely be achievable, yes.

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Q nd based on this e-mail, it appears that that's what you told Mr. Mc rdle, correct?

It looks like that I say $1,000 a square-foot would absolutely be achievable for the product that we were going to build, yes.

MR. MER: Let's go ahead and pull up the 2013 supporting data spreadsheet which is Plaintiff's Exhibit 708 in native. Let's look at Rows 253 to 267.

Q This is the section that discusses the valuation of the 71 mid rise units. That was the subject of Mr. Mc rdle's engagement, correct?

Correct.

Q nd line 264, what is the price per square-foot that Mr. McConney is using?

thousand dollars a square-foot.

Q The same number that you provided to Mr. Mc rdle, correct?

Yes. I told you yesterday that those numbers look like they would be very accurate for the project that we had in mind.

Q Okay. nd let's put up some other testimony on the same subject matter from yesterday. This is at line 3367. Sorry. Page 3367, line 9 to 15 and this is a quick Q& , so I'll just read it.

"QUESTION: Mr. Trump, to your knowledge, did you ever forward to Mr. McConney or tell Mr. McConney anything

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about Mr. Mc rdle's valuation?

" NSWER: I would have never thought to, no.

"QUESTION: So the answer is you did not?

" NSWER: I didn't -- no, I did not. I would have never thought to because I didn't work on this document.

THE COURT: Wait a minute. Wait a minute. You said, "I didn't know." It sounds like "I'm not aware of." I would read that, "I didn't, no."

THE WITNESS: Exactly, Your Honor. nything in life is possible. I sent thousands of e-mails every day. nything is possible.

Q I didn't ask you a question.

THE COURT: There's no question.

MR. MER: pologize, Your Honor. I do recall reading it, so I may not have used the inflexion that I should have, but I appreciate your point.

Q Let's look at Plaintiff's Exhibit 1074. This is an e-mail exchange that you have with Mr. McConney in September of 2013, correct?

Looks to be, yes.

MR. MER: I move to admit into evidence, Your Honor.

MR. ROBERT: Statute of limitations.

THE COURT: Overruled. It is in.

(Whereupon, the Document was marked in evidence as

Plaintiff's Exhibit 1074.)
Q I'm just going to look at the e-mails from the bottom up. The first e-mail is an e-mail from Mr. McConney to you where he says, "Eric, did the appraisal come in yet. Thanks, Jeff." Do you see that?
I do.
Q nd then the middle e-mail is from you back to Mr. McConney. "I have a call with David tomorrow at 1:30. Would you like to join." That's a reference to David Mc rdle, correct?
Yes.
Q You were inviting him to join the call that you're going to have with Mr. Mc rdle the next day at 1:30, correct?
It's very diligent of me. I'm very proud of myself. Yes, I am inviting my controller to join a call that apparently I had with David Mc rdle.
Q So you thought it was appropriate to have Mr. McConney join the call that you were going to have with Mr. Mc rdle; yes or no?
I asked him if he wanted to join, yes.
Q In the top e-mail, Mr. McConney says in response to you, "I don't need to be on the call. I'd just like to know the value, so I can use it for your dad's F/S." That's what he wrote back to you, correct?
Correct.

Q nd you understood "F/S" to mean financial statement, right?
financial statement of my father's yes.
Q So at least on this one occasion, you did think it was appropriate to share Mr. Mc rdle's valuation with Mr. McConney; yes or no?
Yes, clearly, I was very diligent. I asked him if he would like to join our call.
Q Now, you testified you were aware that there was a conservation easement donation over the Seven Springs property in 2015, right?
Correct.
Q nd you are aware that that easement donation was based on an appraisal done by Cushman & Wakefield, yes?
Yes, I am.
Q re you aware that the final appraisal for the Seven Springs easement donation was a kind of appraisal known as a before and after appraisal?
I wouldn't get into these details. I would leave something like that to Sheri Dillon.
Q My question wasn't about who you would leave the details to.
I don't know the appraisal methodology of exactly what happened behind the scenes, no.
Q Do you know that it was a before and after appraisal;

yes or no?
Sitting here today, ten years later, I would have zero recollection of that.
MR. MER: Okay. Let's go ahead and put up the 2016 Jeff Supporting Data which is Plaintiff's Exhibit 742 in evidence and I'd like to take us to Row 927.
Q You'll see Row 927 is the row that relates to Seven Springs and has the valuation. If we just go up to check the dates, there's the value in Column G. Just go up until we hit a date for Column G. Column G is 2015, June 30, 2015 and Column H is June 30, 2016. Let's now go back to Row 927. nd you see that Mr. McConney's note says, "even Springs per appraisal for easement."
nd I'll represent to you, and we can put up the testimony if you'd like to see it, but I'll represent to you that Mr. McConney testified at trial that because the donation was made after June 30, 2015, he used the before value from the appraisal of 56 million for the 2015 value and he used the after value from the appraisal of 35.4 million for the value in 2016.
Mr. Trump, were you aware that Jeffrey McConney used the Cushman appraisal for the easement donation on Seven Springs as the basis for the value of the asset in both 2015 and 2016; yes or no?
Not to the best of my knowledge, no.
Q I'd like to talk to you now about some certifications

you signed. Let's look at Plaintiff's Exhibit 1330 in evidence. This is a document entitled, "power of attorney." I'll wait until we get you a copy. If you turn to page 6 of 8 of this document, you'll see that -- do you recognize that as your father's signature under the principal line?
It is very distinctive. I do.
Q nd he signs it on March 9th of 2017, correct?
Correct.
Q nd on page seven, it lists both you and your brother Donald Trump, Jr. as the agents, correct?
That's correct.
Q nd is that your signature on the second line?
Yes, it is.
Q nd you and your brother both signed this document on March 13th of 2017, correct?
Yes, we did.
Q nd page three of the document shows the grant of authority. Do you see that?
I do.
Q nd to just to go through this quickly, your father initials item P, which indicates a grant of authority for items and D above. is real estate transactions. D is banking transactions. Do you see that?
That's correct.
Q nd then under G, modifications, there is an underlying

paragraph. I'm just going to read it. "The authority granted hereunder is solely with respect to the execution and delivery of certifications and similar documentation (including without limitation compliance certificates) in connection with existing financings in which Donald J. Trump is a guarantor."
Do you see that?
bsolutely.
Q Can we agree that this is the document that authorized you to sign certifications as attorney in fact for your father in connection with loans?
That looks to be accurate, yes.
Q Let's go ahead and look at some certifications for 2020. We are going to look at Exhibit 518. You'll see that the first page is an e-mail from dam Rosen to an individual at db.com, which is Deutsche Bank.
Do you see that?
I do.
Q His attachment lists a number of compliance certificates -- sorry. The e-mail lists as attachments a number of compliance certificates. Do you see that?
Yes, I do.
Q Do you recall that you were the person who signed these 2020 certificates?
Yes, I do.
Q If we could just quickly look at them and identify your

signature the on these. Page three, if you'd look at that first, that's your signature, correct?
Yes, it is.
Q nd page five, that's your signature, correct?
Yes, it is.
Q nd page seven, that's your signature, correct?
That's my signature, yes.
MR. MER: Your Honor, I move to admit this into evidence.
THE COURT: It's in. Granted.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 518.)
MR. MER: Thank you.
Q Let's go back to page two of the exhibit. This is the compliance certificate for the Chicago loan, correct?
That's correct.
Q nd under the first numbered paragraph, "financial information," I'm correct that there's no "X" mark next to the first bullet that indicates the 2020 Statement of Financial Condition as attached, correct?
That looks to be correct, yes.
Q nd the paragraph underneath the three bullets indicates in the second sentence," s agreed by lender and without prejudice to lender's reliance on the certifications herein, guarantor hereby certifies that the guarantor's

Statement of Financial Condition as of June 30, 2020 shall be submitted to the lender no later than December 31, 2020."
Do you see that?
That's what it says, yes.
Q So it appears that that statement was not ready yet to be included in the certification as of the date the certification was signed, right?
I wouldn't know the answer to that question. That's a legal or accounting question. I would have no idea sitting here today.
Q It is a question about whether the Statement of Financial Condition was available as of this date.
I just -- I don't know the date of this document so it is a little bit hard for me to say.
Q Let's scroll down. The other way. Sorry. It is dated October 28, 2020?
Scroll back down, please.
Understood. It looks like it wasn't due until December 31, 2020.
Q Do you know why it wasn't ready yet by the date of this certification? Just yes or no.
I would have no idea.
Q nd there's the same statement in absence of an "X" in the box for the other two compliance certificates, so can we agree your response would be the same for those as well?

If it saves this Court time, absolutely.
THE COURT: It does.
MR. MER: It does.
THE WITNESS: Your Honor, there we go.
Q nd if you look -- if we go down in the document, there are certain facts being stated in paragraph four about the net worth of the guarantor. Do you see that?
I do.
Q Can we agree that by executing -- by the way, there are -- there's a net worth of guaranty section in the other two certificates as well. Can we agree that by that executing each of the three certifications as Donald J. Trump's attorney in fact, you were certifying to Deutsche Bank the facts set forth in the net worth of guaranty section in each of the certifications, yes?
bsolutely.
Q nd when you executed these three certifications, you intended the bank to rely on the certifications; isn't that right?
I don't know what the bank does with the certifications. I certified something that I believe was accurate and my lawyers told me that it was accurate and our financial people told me it was accurate and that's absolutely accurate. s to what Deutsche Bank does with a piece of paper like this, I have no idea.

Q Let me just be clear because I don't think that was my question. I'm not asking you about what you think the bank did or didn't do with the certification. I'm asking you about your own intention when you sign this.

Is it correct that when you signed this, it was your intent that the bank rely on these certifications to satisfy obligations under the loan agreements; yes or no?

No.

Q Your answer is no, you didn't have that intent?

I don't choose what somebody relies on. What the bank wants to rely on, they can rely on. I believe everything I put in this statement was absolutely accurate and I stand by it 100 percent. s to what Deutsche Bank Deutsche Bank does with, it is their purview, their own company.

Q Let me ask it this way. Was it your purpose and intent of signing the certification to satisfy the obligations of the borrower under the loan agreements that these certifications relate to; yes or no?

I don't know.

Q You did intend for this to be accurate, though, correct?

Yes. I think my father's net worth is far higher than that number, yes.

Q Let's go ahead and look at Plaintiff's Exhibit 517. This is now October 28, 2021 and this is a certification

relating to Trump Endeavor 12, LLC. Do you see that?

Yes, I do.

Q Is that the Doral loan?

That is Trump Doral.

Q nd it's your signature on the second page of this document, yes?

Yes, it is.

MR. MER: Your Honor, I move to admit this into evidence.

THE COURT: Granted. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 517.)

Q If we go to the first page and for this certification, the box is -- got an "X" mark in the first bullet that says, " ttached hereto is the guarantor's Statement of Financial Condition as of June 30, 2021," correct?

That's correct.

Q So in 2021, the Statement of Financial Condition was available to be attached to this certification, correct?

It certainly appears that way, yes.

Q nd by signing this document, you certified as attorney in fact for your father that Donald J. Trump's 2021 Statement of Financial Condition presents fairly in all material respects the financial condition of Donald J. Trump as of June 30, 2021, correct?

That is certainly our belief, yes.

Q nd you intended that to be an accurate representation, correct?

I wouldn't sign something if it wasn't accurate, so yes.

Q nd let's go ahead and mark as Plaintiff's Exhibit 516 the next certification. nd this is a 2021 certification for the Chicago loan, correct?

Yes, it is.

Q nd that's your signature on the second page of the document, right?

Yes, it is.

MR. MER: Your Honor, I move to admit this into evidence.

THE COURT: Granted. It's in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 516.)

Q By signing this document -- if we look at the first page again, by signing this document, you certified as attorney in fact for your father that Donald J. Trump's 2021 Statement of Financial Condition presents fairly in all material respects the financial condition of Donald J. Trump as of June 30, 2021, correct?

That's certainly what it says, yes.

Q You intended this to be an accurate representation when

you signed it, correct?

I would not sign something that was not accurate.

MR. MER: nd the next document is Plaintiff's Exhibit 515.

Mr. mer, I could probably save you some time. I think my answers are going to be the exact same to every one of them.

Q It's going to be very quick, but I just need to do it. These are important documents.

THE WITNESS: Just to save Your Honor some time.

THE COURT: I appreciate the witness' desire to save time. Let Mr. mer do what he needs to do S P, quickly.

MR. MER: I think I've been doing that, Your Honor.

Q This is the certification for the Old Post Office loan, correct?

Yes, that's correct.

Q That's your signature on the second page, correct?

Yes, it is.

MR. MER: I move to admit this into evidence.

THE COURT: Granted. It is in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 515.)

Q nd by signing this document, you certified on behalf of your father as his attorney in fact that Donald J. Trump's

Statement of Financial Condition present the fairly in all material respects the financial condition of Donald J. Trump as of June 30, 2021, correct?

Correct.

Q nd you intended this to be accurate when you signed it, correct?

I would not sign something that wasn't accurate.

Q Now, we've just looked at three certifications you signed stating that your father's 2021 Statement of Financial Condition presents fairly in all material respects the financial condition of your father as of June 30, 2021.

Can you tell us what, if anything, you did to ascertain that the 2021 Statement of Financial Condition in fact presents fairly all material -- in all material respects the financial condition of your father as of June 30, 2021?

I relied on a very big accounting office. I relied on one of the biggest accounting firms in the country. nd I relied on a great legal team and when they gave me comfort that the statement was perfect, I was more than happy to execute it.

Q Did you personally review any of the methodologies used to value any of the assets in the 2021 Statement of Financial Condition, yes or no?

No.

Q Did you personally review any of the supporting data prepared by Patrick Birney in connection with the preparation of

the 2021 Statement of Financial Condition yes or no?

Not that I can remember.

Q One more certification. It's Plaintiff's Exhibit 76. ctually, let me rephrase that. This is a loan modification, not a certification.

Do you recognize this as the July 9, 2019 loan modification relating to the Seven Springs mortgage?

Yes, I do.

Q nd am I correct that you executed this document on behalf of Seven Springs, LLC as its president?

MR. MER: If we go to the signature page.

It looks like that I did it as attorney in fact for my father.

Q Were you at this time the president of Seven Springs, LLC?

I likely was, yes, July 9th of 2019.

MR. MER: Your Honor, I move to admit this document.

THE COURT: Granted. It's in.

(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 76.)

Q Let's go to paragraph 8H. You'll see 8H says, " ll of the representations and warranties of borrower under the loan documents are hereby restated and reaffirmed as true and correct by borrower as of the date thereof and hereof and are

incorporated herein by their "-- "herein in their entirety by this reference." Do you see that?

I do.

Q nd you understood when you signed this loan modification that you were confirming that representation and warranty, correct?

That's what it says.

Q nd you intended that representation to be accurate when you signed this document, right?

I wouldn't sign something that I thought was inaccurate.

Q Let's go ahead and move to Mar- -Lago. Let me show you Exhibit 1382 in evidence. It is already in evidence. Mr. Trump, you'll see that there are two e-mails here. The first is -- the bottom e-mail is from a gentleman, Mr. Corbiciero who was a tax advisor to the company and his e-mail is dated November 17, 2021 and he's sending it to Ray Flores. Mr. Flores reported to you, correct?

Yes, Mr. Flores worked in our office.

Q Not my question, though.

He reported to you, correct?

He had several different reports.

Q Were you one of them?

Oh, absolutely. Yes, I was.

Q nd the subject matter of the e-mail is Mar- -Lago

homestead exemption. Do you see that?

I do.

Q Then if you look at the top e-mail, Mr. Flores is passing this along to both you and Mr. Weisselberg. Do you see that?

I do.

Q nd he passes it along for your information and asks you to let him know if you'd like to discuss this homestead exemption further. Do you see that?

I do.

Q Do you recall receiving this e-mail and reviewing it?

I recall some details about this issue, yes.

Q nd if we look at the second sentence of Mr. Corbiciero's e-mail, he writes, "Last year, we briefly discussed the possibility of filing for a homestead exemption on the Mar- -Lago property since President Donald Trump had really declared Palm Beach and the Mar- -Lago property as his permanent residency." You were certainly aware of that fact, right?

bsolutely.

(Continued on the next page.)

Q nd then the second paragraph I'm going to walk you through and ask you some questions about -- he begins by saying, "in order to do this and this being filing for a homestead exemption, Mr. Trump would have to meet certain requirements to establish residency."

Did you understand when you got this e-mail and reviewed it that there were certain requirements that would need to be met in order for your father to file for a homestead exemption now that he was legally declaring Palm Beach to be his legal residence?

It's certainly what it says.

Q My question is different.

Do I understand it? Yes, I understand.

Q Okay.

THE COURT: Mr. mer, try not to say "okay."

MR. MER: I will try not to.

Q Skipping two sentences down, he says "since the private club is currently owned by a corporation, the property ownership would need to be changed/transferred into his name as an individual and not under a corporation."

First of all, at this point in time you and your brother were running the company; right?

Yes, I would have been the head of the company at this time.

Q Were you aware that Mar- -Lago was owned by a

corporation as of this time?

I don't think we have a single asset that wouldn't be owned in an entity structure. It's just not how you own real estate. Yes, I would be aware of that it's owned in form of entity.

Q nd you were also aware it was being operated as a private club; right?

s a club, yes.

Q He goes on to say "if he was to meet all these requirements then the part of the property that he uses as a residence would be eligible for homestead. The property appraiser would need to come out and do a property inspection and measure the residential area and that portion of the assessment would receive the homestead exemption."

Did you read and understand what Mr. Corbiciero was saying would have to happen to the property in order for your father to file for homestead exemption?

That's what it said. I, again, don't remember much about this, but sure, I certainly trust the words on this piece of paper.

Q Let's look at the next paragraph.

Mr. Corbiciero says "currently, this property is assessed as a private club with the current assessed value at $359 per square foot."

Did you understand in November of 2019 that Mar- -Lago

was being assessed as a private club at a rate that applied to a commercial property?

Certainly says that.

Q My question is a little different.

Were you aware of that fact in this time frame?

I don't think I'd be so nitty-gritty that I focused on details like this. This is just not what an executive at my level focuses on. I certainly see it says that in words.

Q nd when you reviewed this you would have understood it at the time; right?

Presumably. I'm not sure how much attention I paid to this to tell you the truth.

Q Goes on to say "the surrounding residential properties are assessed on average of over 2,000 per square foot with a recent sale just over $3,000 per square foot."

Mr. Trump, did you understand that there was a different rate that applied to residential properties versus commercial properties in Florida?

s a real estate guy do I think that residential properties are taxed differently than commercial properties? Yes, absolutely. 100 percent.

Q I want to be more specific. Did you understand that in the state of Florida residential properties were assessed at a higher rate per square foot than commercial properties; yes or no?

I would have no idea.

Q That's what this says, though? We can agree?

That's what -- sure. That's what this says.

Q nd you would have understood that when you reviewed this e-mail which you indicated to us you did; right?

Very tangentially.

Q nd he goes on to say "if the property appraiser were to separately assess the residential portion of Mar- -Lago in order for it to qualify for homestead, we believe this would result in a much higher assessment and therefore outweigh the potential tax savings from the $50,000 homestead exemption in the immediate future." Do you see that?

Yes, I do.

Q So did you understand from reviewing this e-mail that by categorizing a portion of Mar- -Lago as residential it would increase the tax assessment because the rate that applies to residential properties is much higher than the rate that applies to commercial properties?

Potentially. gain, as I said, I probably didn't focus too much on an e-mail like this.

Q Let's look at Plaintiff's Exhibit 1352, which is the 2021 supporting data that's in evidence.

I'm going to ask to look at Rows 184 and 185 relating to Mar- -Lago. Do you see in Row 185 it says "value if sold to individual?"

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Yes, I do.
Q Did you understand at the time that you certified the 2021 statement of financial -- sorry -- withdrawn.
Did you understand when you certified to Deutsche Bank that the 2021 Statement of Financial Condition presents fairly in all material respects the financial condition of your father as of June 30, 2021 that Mar- -Lago was being valued as if it were a private residence that could be sold to an individual; yes or no?
Well, I think I testified very extensively I haven't seen the backup, but Mar- -Lago is a residence that could be sold to a private individual and we have that absolute zoning right to do so, so that doesn't surprise me at all that you value it that way.
Q nd you're saying that was your understanding at the time that you certified to Deutsche Bank that the 2021 statement presents fairly in all material respects the financial condition of your father; correct?
It's very clear that Mar- -Lago is not a club. It's a private residence and yes -- so I see nothing wrong with that a hundred percent.
Q nd did you understand at the time that you certified to Deutsche Bank that the 2021 statement presents fairly in all material respects the financial condition of your father that at that time Mar- -Lago was being valued for purposes of tax

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assessment as though it were a commercial property used as a private club; yes or no?
It is being used as a private club.
MR. MER: Your Honor --
Yes.
THE COURT: We'll take "yes" to be the answer.
It's used as a private club.
Q nd you understood that at the time you signed the certification; yes?
That Mar- -Lago is a private club, yes. Mar- -Lago is a private club.
Q nd more to the point that it was being assessed for property tax purposes as a private club; yes?
Sure. I think that's how you would assess it.
Q Okay.
THE COURT: Try not to say "okay". Even softly.
THE WITNESS: If you're worried about me, it doesn't bother me.
MR. MER: The Judge has to be even handed. I take his point.
THE WITNESS: I've got thick skin, Your Honor.
THE COURT: Good. You'll need it.
Q You'd be happy to hear I have one more document and the Judge will be happy to hear that it's already in evidence.
nd this is Exhibit 1751. I'm just waiting for the

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extra copy.
nd I'm happy to read off the screen. I don't need the formalities.
Q This is a Separation greement between the Trump Corporation and its various related entities and llen Weisselberg. Do you see that?
Yes, I do.
Q nd I just want to confirm on page seven of eight that you are the person who signed this agreement on behalf of the company?
On page six?
Q Yes. I'm using the page numbers at the very bottom next to the plaintiff's exhibit number. So it says page seven of eight?
Don't worry about it. I clearly signed this agreement.
Q I just want the record to be clear we're looking at the right page?
Understood.
Q Okay. nd you signed this on January 12, 2023; correct?
It looks that way, yes.
Q nd we've had testimony from Mr. Weisselberg just so we have the timeline correct that he had pled guilty to 15 counts of tax fraud on ugust 18th of 2022, so several months before you signed this agreement. You were aware of his guilty plea

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when you signed this document; correct?
I don't know what I was aware of when I signed this document. Presumably if this document would be after, yes; if it was before, clearly not. I don't --
Q Well, I just said that he testified at trial that he pled guilty on ugust 18th of 2022, so that's --
Yes, I would have been aware if that's the case.
Q nd if you look at page two of the document under -- at the bottom of the "benefits" paragraph.
MR. MER: If we could blow that up.
Q It says "the company agrees to make severance payments to the employee," that's Mr. Weisselberg, "in installments of 250,000." I'm just paraphrasing pursuant to a schedule. Do you see that?
Yes, I do.
Q nd let's just quickly look at the schedule, which is the last page of the document.
ccording to the payment dates Mr. Weisselberg has received only the first three of his eight installments; correct?
I presume that to be the case, yes.
Q nd if we go back to page two of the document under paragraph three there is a list of employee promises. Do you see that?
I do.

Q nd it says "in exchange for the benefits provided in paragraph two, that would include the installment payments;" right?
Yes, I assume that's what it's referring to.
Q Mr. Weisselberg promises certain things. I just want to highlight two of them. One of the things he promises is Paragraph B, not to verbally or in writing disparage, criticize or denigrate the company or any of its current or former entities, officers, directors, managers, employees, owners or representatives. Do you see that?
bsolutely.
Q So one of the things he was promising not to do in exchange for getting his payments was to not disparage, criticize or denigrate you; correct?
Certainly not a lawyer, but it seems like that's pretty standard language for any severance agreement, yes.
Q So the answer is yes?
I don't know what it's intended for, but it probably means that he can't openly in the press disparage me, yes. I would never disparage him.
Q But at any rate you are not getting installment payments from him. He's getting installment payments from the Trump Company; correct -- Trump Corporation?
He's a man that worked at the company for 50 years. I was -- ten years before I was born he was working at the

company, yes.
Q Okay. nd in exchange for getting these installment payments he's agreeing not to verbally or in writing disparage, criticize or denigrate certain entities and individuals? nd I'm just asking you simply to confirm that those entities and individuals would include you; correct? Yes or no?
Well, I'm certainly an officer of the company, so, yes.
Q Okay. nd it would also include your brother Donald Trump, Jr.; correct?
Very much sounds like it, yes.
Q nd it would include your father Donald Trump; yes?
Presumably.
Q nd because it includes former officers it would include your sister Ivanka Trump; correct?
She would be a former officer, yes.
Q Okay. nd then if we look at Paragraph D, another one of the promises that Mr. Weisselberg makes in exchange for getting his payments is "except for acts or testimony directly compelled by subpoena or other lawful process issued by a Court of competent jurisdiction," he will not, "one, communicate with, provide information to or otherwise cooperate in any way with any other person or entity, including his counsel or other agents having or claiming to have any adverse claims against the company or any person or entity released by this agreement with regard to the adverse claim."

Let me just stop there. Can we agree that one such entity with adverse claims against the company at the point you signed this is the ttorney General's Office of the State of New York; yes?
I don't know. This looks like pretty boilerplate language for me in an agreement like this, but are you adverse to us, yes. I think the whole world knows you're adverse to us, so I will say yes.
Q "Or two, take any action to induce, encourage, instigate, aid, abet or otherwise cause any other persons or entity to bring or file a complaint, charge, lawsuit or other proceeding of any kind against the company or any person or entity released by this agreement." That was the second part of that promise; correct?
That's correct.
Q Okay.
MR. MER: Sorry, Your Honor.
THE COURT: Mr. mer, how much longer with the witness, with this topic, etc.?
MR. MER: Just a couple questions both with the witness and with the document and I'm done.
THE COURT: Roughly how long?
MR. MER: Two minutes.
THE COURT: Go right ahead.
Q Mr. Trump, did you participate in the business decision

to enter into this agreement with Mr. Weisselberg; yes or no?
Yes.
Q nd was entering into this agreement a business decision that you approved; yes or no?
I signed it. I clearly approved it.
Q nd you testified at the very beginning of our session yesterday that if your father directed you to take an action post his leaving the presidency you would follow his direction. Do you recall that?
I do.
Q Did your father direct you to enter into this agreement with Mr. Weisselberg?
No, he did not.
Q Did he approve of it to your knowledge?
I did this agreement with Mr. Weisselberg. He's a person that worked with our organization for 50 years. I was the person who did this, I was the person who signed it, I was the person who negotiated it.
Q That doesn't really answer my question, which is whether your area approved it; yes or no?
He did not.
MR. MER: That's all I have, Your Honor.
THE COURT: Give me a moment or two.
MR. MER: We have some housekeeping. We don't need do with the witness on the stand.

THE COURT: ll right. We'll excuse the witness. Thank you.

THE COURT OFFICER: Members of the audience, remain seated.

(Whereupon, the witness is excused from the witness stand.)

THE COURT: I'd like to go back to where we were this morning after our various statements on the record. I'll consider defendants' objection to by consulting with or receiving notes from my law clerk to be a continuing objection and I will continue to consult with the staff that I'm ethically allowed to consult with, that being my two law clerks and I will continue to do that for the trial.

Mr. Kise and your colleagues, your record is preserved and going forward I don't want any other comments about my staff or how I communicate with them.

Would you like to respond?

MR. KISE: gain, just to be clear, Mr. Robert may have something as well.

So then we are not permitted to note for the record just the observation? That's it? Without comment, without any argument? Just simply make a note on the record so that it's clear in the record what's taking place in the courtroom? Because otherwise there is no way to -- there is no other way to do it. I don't have another way to do it.

There is no recording, there is no video. So the only way the record will reflect what's actually taking place is to have some reference.

MR. W LL CE: Mr. Kise can note the number of notes passed and submit an affidavit if he chooses to make a motion at some point.

MR. KISE: I don't know that we need to do that, but if something is taking place it could just be simple as making reference that the Court paused or the Court received a note. I mean, it doesn't have to reference anyone specific or any way. It's just we have to be able to make some record.

THE COURT: Okay. You've made considerable record and I am stating on the record that I will continue to receive notes, consultations of any sort at anytime with my staff. So now you have as much as you need. If you want to appeal or move to recuse or whatever you want to do, you have plenty of ammunition. The problem is it's totally useless and meaningless because I have an unfettered, absolute right to consult with my law clerks anytime, anyplace about any matter. Go ahead.

MR. KISE: ll I'm saying is from here forward the record isn't complete so between now and the end of the trial, there may be other things we have to note.

ppeals, as you know, generally take place at the

end of the case and so there has to be a complete record. I may have made a record to this point, but --

THE COURT: But I'm giving you an opportunity to make a record going forward. I will continue to do it. If you want me to say every week or every day yes, I can communicate with my law clerk today or yesterday, I'll do that because I am absolutely certain that I have the right to do that and you can make whatever record you want, but let's not belabor this point.

MR. KISE: I'm not trying to, but I just want to be clear the contemporaneous nature of it is relevant for purposes of the record. So, in other words, the fact that there are notes being passed in the abstract I might agree with you may not give rise to any issue, but if notes are being passed at certain specific times or if they're being passed in a way that might indicate some bias -- and I'm not going over that record again. It's there. That's a record that needs to be made contemporaneously. There is no other way to do it contemporaneously.

To say at the end of the day yes, you received notes, okay, that may be fine. s you yourself indicated, you may receive notes about lunch. It's possible, so it's the contemporaneous nature of it and I'm not trying to burden the proceeding and we can even come up with a shorthand for it if you want me to note an objection or some

statement like that just so it's in the record. If that's what that means we're happy to do that. We're not trying to disrupt. It's just in order to have a complete record for appellate purposes. nd what we do with that record will have to be decided at the time by maybe the appellate lawyers. We just have to be able to make the record on a contemporaneous basis. That's all I'm saying.

Mr. Robert.

THE COURT: You've had, what is it, four weeks now? nd you've made a record continuously and I completely agree with the ttorney General's position. If you want to make a motion at this point, go ahead and do it.

MR. ROBERT: Your Honor, I think we may --

THE COURT: There is no more need to make a record. You have such a complete record. You've made speeches, you made observations. I've said yes, it's being done and yes, I'll continue to do it. What more record do you want?

MR. KISE: It's like -- well, it's no different from now until the end of trial you're going to make other evidentiary rulings, I presume, or you're going to make other rulings about other aspects of the case. It's the same record. I mean, just because I've objected before to some particular thing, we still have to object going forward. I mean, that's just the nature of the appellate record. We just have to have some basis for it.

Whether we will make a motion now or not, as I said, that's something that we will determine, but that's very different than an appellate record that needs to be complete for appellate purposes. So it would be no different than if I'm not allowed to object to some evidentiary ruling or some other issue. It's the same sort of thing. It's just really no difference to it at all.

THE COURT: What do you propose to do when you see a note or ten notes or a day's worth of notes to make a record every day hey, the principal law clerk is passing notes to the judge on the bench?

MR. KISE: Your Honor, as we have done before, to the extent there is something that gives rise to in our minds the appearance of impropriety or bias then I think we have to flag that in the record. Otherwise, it's waived. We're going to get to the First Department and the First Department will look at us and say why didn't you raise that on the record? Why is it not there? If you're talking about a specific ruling at a specific time, why did you not raise it. That's all I'm saying. It goes back to what I was saying before in the past. I have certainly felt truly that I'm debating with two adversaries. I've got one in one place and one in another and that's a record that needs to be made because that is a record that is I think, respectfully, relevant for appellate purposes.

MR. W LL CE: It's not relevant to what is going on. We are trying to put on a trial and we are putting in witnesses making evidence. This sideshow of talking about the clerk passing notes to the Court is interrupting -- is seems, to me, largely designed -- I don't know. I guess you're making a record trying to blow up the trial, but also designed to interrupt our ability to put in evidence.

We've been doing this for five weeks. If you think this has been prejudice that has disrupted this trial, please make your motion now. Don't let us go on for another four weeks. But if there is something improper about the judge and the clerk passing notes, you should make your motion now instead of continuing to interrupt this trial.

The difference between making an objection about evidence and making an objection about something that is not relevant to an appeal, I think should be obvious at this point.

MR. KISE: So I appreciate the fact that to Mr. Wallace it appears obvious. Maybe I'm slow. It's not obvious to me. The record is the record. I've only handled, I don't know, 200 appellate cases in my career. I've only handled four cases in the Supreme Court of the United States. I don't know much about appellate records.

MR. W LL CE: nd how many of those cases involved an overturned decision based on notes passed from a judge to a clerk?

THE COURT: Mr. Wallace, one at a time.

MR. KISE: The answer to the question is none. That's why it's a significant record to be made. But no one is obstructing the trial. No one is doing anything to obstruct the trial. We are proceeding forward. They have been allowed to put in ample evidence and so, therefore -- and over objection, sometimes the objections are sustained. But the point is we have to make our record. That's our -- that is our role and right as attorneys.

So I -- and we haven't made it repeatedly. I have to disagree with that characterization. It's not been like every minute of every day that this issue has been brought to the forefront if it is impeded or proceeded in any way but there has so be some way if we believe that there is an issue that it be raised. That's all and we will be, as we have before, we will be direct, appropriate and measure. We're not making extra judicial statements about this. I certainly have not made any and don't intend to as you have probably observed over the last year is my general practice.

So the point is as a lawyer, though, I have to make a record and while I appreciate the advice and direction from the he ttorney General, those sorts of things are decided on this side of the table, just like what motions they bring and how they proceed is decided by them.

nd Mr. Robert I know had one other thing.

MR. ROBERT: I just wanted some clarity because, Your Honor, are you directing us not to object or that we're not allowed to object to the conduct we observe in the courtroom? That's all I want to know.

THE COURT: I'll issue a written decision later today and you'll know.

ll right. nybody else? I understand we have housekeeping matters or matter?

MR. MER: Yes, Your Honor. It goes to the point that we played some video clips of testimony and I realize the court reporter does not transcribe the video clips, so what we have are reports that contain the testimony that we've marked as Plaintiff's Exhibit so that we can get those admitted into evidence since there needs to be a record of what we all heard when we played the video clips and I've just --

MR. KISE: record? Really? There needs to be a record? Wow. That's interesting.

MR. MER: Yes, there needs to be a record.

So I'm going to hand out the plaintiff's exhibits. They're all a stack. So that's one stack, this is another stack.

Transcript continues on the following page...

MR. MER: I'm going to go through them individually. Mr. Kise, I already discussed with your colleague Mr. Robert, so we agreed on this process. The first one is a clip of Mr. Weisselberg's testimony and --

MR. KISE: If it is confirmed that they're correct, Your Honor, then we don't have a problem with it. I mean, he doesn't have to go through each line by line.

MR. MER: I'm not. I'm going to say the exhibit number and I'm going to ask that they be admitted into evidence.

MR. KISE: We can do it by agreement.

MR. MER: Plaintiff's Exhibit 3334 is a clip from Mr. Weisselberg. Plaintiff's Exhibit 3335 is the clip we played from Mr. Mc rdle's direct testimony. We did that both with Mr. Trump on the stand. I'm sorry. This is from Mr. Trump's -- Eric Trump's testimony. We played that for Mr. Mc rdle. That's 3335. Plaintiff's Exhibit 3339, that was Eric Trump's testimony that we played. Plaintiff's Exhibit 3338, also Mr. Trump's testimony we played. Plaintiff's 3337, another clip from Eric Trump. nd finally, Plaintiff's 3336, another clip from Mr. Eric Trump's deposition testimony. So we ask that all of these exhibits be admitted into evidence.

MR. ROBERT: No objection.

THE COURT: Okay. Granted. They're in evidence.

(Whereupon, the Clips were marked in evidence as Plaintiff's Exhibits 3334-3339.)

THE COURT: ny other housekeeping matters?

MS. F HERTY: Yes, Your Honor. During the examination of Mr. Orowitz, there were two exhibits that were discussed. There was testimony on them, but counsel did not move them in for admission. So I'm putting it on the record we'd like to move these into evidence.

First is plaintiff's Exhibit P X 3111 and the second is PX 3332. Mr. Orowitz identified both of these exhibits as e-mail chains to which he was a sender and recipient as well. lthough, they weren't formally moved in, we would ask the Court do so now.

(Whereupon, the Documents were marked in evidence as Plaintiff's Exhibits 3111&3332.)

MR. KISE: Your Honor.

THE COURT: Yes.

MR. KISE: For good measure on a Friday, statute of limitations and relevance objection.

THE COURT: Overruled. ny other housekeeping matters or any other matters? Just give me one second. Okay. We will reconvene on Monday at ten o'clock and the first witness will be?

MR. MER: The only witness will be Donald J. Trump.

THE COURT: The only witness will be Donald J. Trump. Thanks, everybody. Good weekend.

(Whereupon the trial was adjourned to Monday, November 6, 2023.)

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In The Matter Of:

NYS ttorney General v.
Donald J. Trump

November 6, 2023

Ny Supreme Court- Civil

Original File November 6 2023 G v Trump.txt
Min-U-Script® with Word Index

SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: P RT 37

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PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

– against – INDEX # 452564/2022

DON LD J. TRUMP; DON LD TRUMP JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY McCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC; and SEVEN SPRINGS, LLC,

Defendants.

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Bench Trial

November 6, 2023
60 Centre Street
New York, New York 10007

B E F O R E: THE HONOR BLE RTHUR S. ENGORON,
Justice of the Supreme Court

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MICHELE P NTELOUK S
MICH EL R NIT
Senior Court Reporters

THE COURT: Well we have a lot of people here and apparently a lot of photographers outside that want to photograph some of you.

We always call them the gaggle of photographers. I think gaggle refers to geese, doesn't it?

(Photographers entered the courtroom.)

(Photographers exited the courtroom.)

THE COURT: I would like to start right away with the next witness.

re there any housekeeping matters that can't wait until later?

MR. KISE: Not that can't wait, Judge. We have a minor housekeeping matter, but if Your Honor would like to proceed we will just wait until later.

THE COURT: Great. Thanks.

Plaintiff would you like to call your next witness?

MR. W LL CE: Certainly, Your Honor. The People call Donald J. Trump.

(Whereupon the witness took the stand.)

COURT OFFICER: Please raise your right hand.

D O N L D J. T R U M P, after having first been duly sworn was examined and testified as follows:

COURT OFFICER: Please state your name and

either home or business address for the record.

THE WITNESS: Yes. It is Donald J. Trump, and I live in Palm Beach, Florida, 1200 Southern Boulevard.

THE COURT: That sounds good.

I'll just ask you, like I ask every witness, talk right into the microphone loudly, slowly, clearly.

Mr. Wallace, please proceed.

MR. W LL CE: Thank you, Your Honor.

DIRECT EX MIN TION

BY MR. W LL CE:

Q Good morning, Mr. Trump.

Good morning.

Q You were the beneficial owner of a bunch of companies branded as The Trump Organization; is that correct?

Yes.

Q From May 1, 1981 to January 19, 2017, you were the Director, President and Chairman of the Trump Organization Incorporated; is that correct?

Yes.

Q nd the assets of the Trump Organization are currently held in a revocable trust; is that correct?

Yes.

Q nd that trust is called the Donald J. Trump Revocable Trust; is that right?

Yes that's right.

Q If we talk about the Trust today, you will understand that's what I am referring to?

Yes, certainly.

Q You are the donor of all of the assets in the Trust?

Yes.

Q re you the sole beneficiary of the Trust?

Yes.

Q nd you formed the Trust when you decided to run for president; is that correct?

Pretty much when I won, I formed the Trust.

Q Do you recall that the Trust may have been formed actually in 2014?

It could have been earlier, but it was primarily when I thought about running. nd I think maybe came into -- it could be a little earlier, but pretty much around the time that I won.

Q nd the purpose was related to your run for the Presidency; is that correct?

I thought there would be a conflict of interest if I had the properties outright, so I formed the Trust. But no -- Excuse me, even though I would be allowed to do that.

In fact, I told you the story once about George Washington, he had two desks, one for business and one for President. You are allowed to do that. But I didn't like it. nd I felt there may be a conflict of interest, so I formed the

Trust.

Q But prior to you becoming President of the United States you were the sole Trustee of the Trust; is that correct?

That's correct, yes.

Q nd after you were elected President of the United States you appointed your son, Donald Trump Jr. and llen Weisselberg as Trustees; is that correct?

That's correct, yes.

Q So why did you select Mr. Weisselberg to be a Trustee?

Well, he had been with the company a long time. nd he was somebody that I had confidence in. He did a good job. I mean, he was very good at what he did. He was a -- he was the comptroller and financial person. nd we really liked him for a long time.

Q nd you trusted Mr. Weisselberg?

I did, yes.

Q t the time you appointed him as Trustee he was the Chief Financial Officer of the Trump Organization; is that correct?

Yes, that's right.

Q Why did you select your son, Don, to serve as a Trustee?

He is a hard working boy, you know, young man, and he has done a very good job; as has Eric. Eric was very busy

running the company, and I thought that putting Don in would be good. He is smart. He is a very honorable guy.

Q nd when you left the White House you appointed yourself as Trustee again; is that correct?

That's correct.

Q nd at that time after you left the Presidency you were the sole Trustee of the Trust; is that correct?

Um, yeah, around that time, yes.

Q Why did you make yourself the sole Trustee?

Well, I figured that I would be back in the business world for a little while, depending on what happened in politics. nd I was going to get involved with the business again. I wasn't in politics other than thinking about running or doing whatever I had to do. So, I figured that I would be back in business, I might as well be the Trustee.

Q I am going to hand up to the court officer a document that has been marked as Plaintiff's Exhibit 1720.

(Handing)

MR. W LL CE: If you could put a copy of that up on the screen, please?

If we could skip to page two of this document.

Q This is a document entitled the Donald J. Trump Revocable Trust Removal of Trustee. nd if we look down at the bottom of the page it says: "Now, therefore, pursuant to subarticle of rticle 13 of the greement of Trust settlor

hereby removes Donald J. Trump as Trustee under the agreement of Trust, effective as of 2:30 p.m. eastern standard time, July 7, 2021."

If we look on the next page you will see -- is that your signature?

Yes.

Q Why did you remove yourself as Trustee as of July 7, 2021?

I don't know that -- I think we were at a position where I was gaining more and more confidence in my family in terms of business. nd you would have to see what the alternative is. Who are the trustees that were appointed, because I had many different.

Q Sure. Yeah, I am happy to show you page five of this document, which is entitled ppointment and cceptance of Trustee.

It states at the bottom: "Now, therefore, pursuant to subarticle of rticle 13 of the greement of Trust (i) settlor hereby appoints Donald J. Trump Jr. as Trustee under the greement of Trust. nd (ii) Donald J. Trump Jr. hereby accepts such appointment effective as of 2:30 p.m. eastern standard time, July 7, 2021."

Yeah.

Q So that's your son, Don Jr.?

That's right. He was impressive in business, as was

Eric. nd I thought that I would do that while I continue onward with politics.

Q Okay. nything in particular was happening in July of 2021 that led to that decision?

Well other than you and about every other Democrat, District ttorney, G and U.S. ttorneys, et cetera, were coming after me from 15 different sides, all Democrats, all Trump haters. nd all cases that are not good, that are inappropriate and not good. Weaponization they call it.

But I felt Donald would do a good job. He would be running the business with Eric. nd I had great confidence in him.

Q So I am just trying to understand. Was the decision to appoint Don actually related to the investigations you referred to?

I think more so to the fact that I was staying very much in politics. You know, obviously as you see I was -- I have been in politics pretty much more than I thought perhaps.

Q Okay. Mr. Trump, I am going to put a document up on the screen. I don't think we need to have a hard copy of it. This is a document that is already in evidence as Plaintiff's Exhibit 787. This is a copy of your 2011 Statement of Financial Condition; is that correct?

Yes.

Q Is it correct that you had a Statement of Financial

Condition prepared as of June 30 for every year from 2011 until you became President in 2017?

I think so, yes.

MR. W LL CE: Your Honor, housekeeping, I failed to move into evidence document 1720, which was the Trust document we just looked at.

THE COURT: Granted. It is in evidence.

MR. W LL CE: Thank you, Your Honor.

Q If we go back to the Statement of Financial Condition, is it correct that you had reviewed the Statement of Financial Condition in each of those years from 2011 to 2017 before it became final?

Yeah, I would look at them. It was not something that was of great urgency because I knew they weren't very badly needed in a true sense, but I would look at them. I would see them. nd I would maybe, on occasion, have some suggestions.

Q When you say they weren't badly needed, what do you mean?

Banks didn't find them very relevant. nd they had a clause in it, a disclaimer clause. You could call it a worthless statement clause, because they were done in such a way that they really were -- you talked about it here recently, a compilation. They were just something that you would have for yourself. But if you were borrowing money, and as I guess

people are starting to say I was very under levered anyway to start off with. But they were not really documents that the banks paid much attention to. They looked at the deal. They looked at the asset. If it is real estate, they looked at the location. But they weren't -- these were not very important -- primarily for the reasons that you had a disclaimer clause that was very, very powerful.

Q How did you know that the banks did not pay much attention to your statements?

Because I have been dealing with banks for 50 years, and I probably know banks as well as anybody. nd I have borrowed a lot of money, I have paid back a lot of money, and I know what they look at. They look at the deal. They look at the location. They don't want to get involved in financial statements because that's not what they are after. If a deal goes bad, they want to be able to take the deal back over and, you know, have it. They want you to be able to put up some cash or whatever it is you may be -- including expertise. But they don't want to be fighting for ten years over a personal financial statement. They want to take over the deal.

Q So you understood that these statements would go to banks, but it is your view based on your experience that they didn't rely on them very much?

They may go to the banks. Some banks wanted them. They didn't -- they just weren't a very important element in a

bank's decision-making process.

nd we will explain that as this trial goes along, this crazy trial goes along, because we are bringing in some bankers, and the bankers will tell you -- very big bankers, bankers that dealt with me, and they will explain exactly what their processes were. But these were very substantial bankers, and they will explain what the process is.

But they paid little attention to documents, unless they were certificated documents, unless they were at the highest level, where everything was checked, everything was -- but even then they were more interested in the deal.

THE COURT: Mr. Trump, Mr. Wallace is being very patient, but I would like to move things along a little faster. Please, just answer the questions, no speeches. Mr. Wallace is going to ask questions. You are going to answer them. I am going to make sure that happens. nd some of your answers have not been responsive to the question. They responded, but then there is a speech to be had after that.

Mr. Kise?

MR. KISE: Your Honor, respectfully, I have been watching that. ll of Mr. Wallace's questions have called for narratives: Not badly needed, what do you mean; that's an open-ended question. How did you know the banks didn't rely; that's an open-ended question. So you

understood. I mean, if Mr. Wallace is going to ask open-ended questions that call for narratives, that I haven't objected to, ordinarily, you know, I like to object to Mr. Wallace's questions, but they are narratives. So if they call for narratives, I think it is fair for the witness to narrate. He will certainly understand your instruction, but they are open-ended questions he is asking. He is not asking narrow questions like: What do you mean by, you know, this. What is your understanding of that.

Those are questions that call for narratives, respectfully.

THE COURT: Well, we agree on the principles. We disagree on the application. So let's just continue.

MR. W LL CE: Thank you, Your Honor.

Q Why don't we go through one of the later statements in a little more detail.

MR. W LL CE: If we could get Plaintiff's Exhibit 730, please.

This is in evidence, Your Honor, so we are providing an extra copy for the witness.

(Handing)

Q Mr. Trump, I have handed you a copy of a document that is in evidence as Plaintiff's Exhibit 730. Do you recognize this as a copy of your 2014 Statement of Financial

Condition?

Yes, I do.

MR. W LL CE: If we can turn to page two of the document, we will also put it up on the screen.

Q The second paragraph states: "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of merica. nd for designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the financial statement."

Is that statement true and accurate?

True in the sense that what they wanted was -- this is Mazars, what they wanted was as much information as we could give them so they could do their statements. nd if you look at every other paragraph, that's what they talk about.

Q So it is true that you were responsible for the preparation and fair presentation of financial statements?

Getting them information, yes. In a form of getting them information.

Q Okay.

nd if they had a problem with it, they wouldn't have done the statement. In other words, if they didn't get what they wanted as per that paragraph, they would call, can you get this, can you get that, and they wouldn't do the statement.

Q So who is responsible --

MR. W LL CE: Well, strike that.

Q Can you tell me, what did you do to meet your responsibility for the preparation and fair presentation of this financial statement in accordance with accounting principles generally accepted in the United States?

Me personally? Me personally or...

Q Let's start with you personally.

Okay. Well, first of all it is so long ago, you know, this is well beyond the statute of limitations. I would think anybody else would be well beyond the statute of limitations, but I am probably not because I am sure the Judge will rule against me, because he always rules against me. But this is something well beyond the statute of limitations.

But, I will tell you that my primary thing was to tell people to give them anything they needed.

THE COURT: Mr. Kise, was that comment necessary and part of the narrative to answer the question?

MR. KISE: Well, Your Honor, you know, he is asking broad questions about him personally. I think what he is trying to understand is the witness's perspective. I mean, we are -- this is an unusual situation and an unusual trial. I think the Court should grant the former President of the United States and according to the New York Times this morning perhaps soon to be the future

President of the United States a little latitude to explain himself. It is a bench trial, there is no jury, if it is his view, it is his view.

Your Honor is in charge of the courtroom, you have our view. You can instruct him as you see fit. But again, Mr. Wallace is trying to get at what is this witness's understanding and what he did. The only way he can present that is to explain his position. I think it is fair for the Court to hear his position, whatever it may be, whether it agrees or not. I certainly think it is fair for the merican people to hear his position. But, we are subject to Your Honor's instruction.

THE COURT: I think it was a yes or no question, was he responsible.

MR. KISE: Is the question to me or?

THE COURT: The comment that I always rule against him, which as you know is not true anyway, it certainly didn't answer the question.

So Mr. Trump just answer the question. You can attack me, you can do whatever you want, but answer the questions.

MR. W LL CE: Could we get a readback please, Your Honor?

THE COURT: Read back, please.

(Whereupon, the record was read back by the

court reporter.)

Q The question is, yes, what did you personally do to fulfill your responsibilities for the preparation and fair presentation of the financial statement?

ll I did is authorize and tell people to give whatever is necessary for the accountants to do a statement. In other words, we supplied them with what they needed. nd if they didn't get it, they wouldn't do the statement.

Q What people did you authorize?

Really anybody, you know, sometimes they would call a building or they would call a project, or maybe perhaps I think one or two times they wanted to go see a project. They would go out to Westchester and see something that I did out there and Briarcliff Manor or do things -- I authorized, whatever they needed to get their statement done, they could do.

Q When you said that they would go see a project, are you talking about the firm Mazars?

Excuse me?

Q You said that sometimes they would want to go see a project and you mentioned Westchester. Is the "they" you are referring to Mazars?

Yes.

Q Who internally at the Trump Organization would you provide the direction to give Mazars whatever they wanted?

lmost anybody, if somebody would ask. For instance,

if they would call somebody within the organization in purchasing or whatever, I would give them. But I would do it principally llen Weisselberg and Jeff McConney.

Q ny other instructions besides -- let me withdraw that question.

Would you provide Mr. Weisselberg and Mr. McConney with any instructions for how the statements should be prepared?

Not really. No. I just wanted them to get the information to the accountants so they could do a statement.

MR. W LL CE: If we could turn to page six of this document. This is the top.

Q It states: Basis of Presentation. nd says: "The accompanying Statement of Financial Condition consists of the assets and liabilities of Donald J. Trump. ssets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods.

Such valuation methods include but are not limited to the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values, as determined by Mr. Trump in conjunction with his associates and in some instances outside professionals."

Let me ask first, Mr. Trump, is it correct that you were responsible for determining the values stated in the financial statement?

If somebody would ask me an opinion, I would give it to them. If Mazars would ask me an opinion, which rarely they did, I mean you are talking about many years ago, you are talking about over years, but I would certainly, I think I am probably more expert than anybody else. I think I, you know, have shown that I know more about real estate than other people. So if somebody would ask me or if I would have an opinion I would -- I would give it.

Q In light of your expertise in real estate, do you recall ever thinking that the values were off in your Statements of Financial Condition?

Yeah, on occasion.

Q What were some of those occasions?

Both high and low; both high and low.

Q Which occasions do you recall?

I thought that Mar-a-Lago was very underestimated, but I didn't do anything about it. I just left it be. It didn't matter, I didn't care, because the numbers you are talking about here is, you know, they are very big numbers, very, very big. Far bigger -- the values are far bigger than what is on the financial statement. I thought Mar-a-Lago was underestimated. I thought 40 Wall Street was very underestimated because that building has tremendous value. I thought that there were numerous other things. I thought Doral was very underestimated. I thought it was considerably more

valuable. Not necessarily his golf courses, but it is right in the middle of Miami, right next to the airport. I would say you could build thousands of units and hotels on the site. So you don't look at it as a golf course. It is a great golf course, very successful, four of them, four courses. One was sold. It was five. One was sold that was a little disconnected, and sold it.

But I thought Doral was very underestimated.

nd you yourself had Mar-a-Lago at $28 million. The Judge had it at $18 million. nd it is worth, say, I say from 50 to 100 times more than that. So I don't know how you got those numbers. But the Judge ruled against me based on the fact, I guess, that he thought it was worth $18 million, which is just absolutely crazy.

THE COURT: The question was examples of when properties were undervalued or overvalued, not why you think so.

Q I may ask you about those as you go on. Your counsel are free to either cross examine you or call you as a witness. nd you can tell the full story as you see fit, but it will go faster if --

That's fine.

Q You mentioned Mar-a-Lago, 40 Wall and Doral?

nd others. But I think that -- I can think of one that was, I thought, overvalued and we changed it. I thought

the apartment was overvalued when I looked at it. But I didn't spend a lot of time looking at this. But when I heard about the apartment and the valuation, I thought it was overvalued. But you never know, because people come along and they -- they will give you -- an apartment was sold fairly recently in New York for $250 million. I like this much better. So I don't know what overvalued means. Somebody comes along, it only takes one very rich person to buy it. But I thought the apartment was high. But I thought many things were low.

nd we -- we didn't value the most valuable asset and I didn't put it on the statement, but it is the most valuable asset, is the brand value. nd I asked about that and I really didn't -- I didn't put it on the statement, but if you look at companies, the brand value is a very big part of the asset value of a company.

Q We, again, I am probably not going to ask you much about brand value, your attorneys are free to ask you all about brand value.

Going back to the estimate.

Excuse me, sir, but if I wanted to build up a statement, like you said that I would before up found out exactly how rich we are, I would have added brand value here and I would have increased it by tens of millions of dollars.

Q Do you have an understanding of whether a Statement of Financial Condition prepared under G P is allowed to

include brand value?

It is an asset. Coca-Cola includes it and other big companies, public companies, I think they all include brand value. nd, you know, I became President because of my brand. I sell books at levels that are incredible because of my brand, and so many other things.

nd if I wanted to build up this statement like you are saying, you know, you were very surprised when you saw the real numbers. nd now you go a different way, you changed your case midstream. If I wanted to build up my financial statement all I had to do is add brand value and my financial statement would be very, very substantial.

THE COURT: Mr. Wallace, did you ask for an essay on brand value?

MR. W LL CE: No, Your Honor.

Q My question was, and I will ask it again, Mr. Trump, do you have an understanding of whether a Statement of Financial Condition that is prepared under G P, is allowed to include brand value?

I think it is, because public companies have brand value. Coca-Cola has brand value.

Q nd did you ever discuss with Mr. Weisselberg whether or not under the rules of G P you were allowed to include your brand value on your statement of financial condition?

No, because I didn't care about it. I didn't care

whether we added it or not. It wasn't something that was important to me. If I wanted to build up my numbers in a fake way, which you are trying to say, but now you are not. Maybe you are going a different direction. But I didn't care enough about it to bother with it.

THE COURT: That was a yes or no question. It could have been answered yes or no. Please answer yes or no if you receive such a question.

Q So the statement was primarily prepared by llen Weisselberg and Jeff McConney; is that correct?

Yes.

Q nd they would give you a copy of the statement; is that correct?

Yes, at some point.

Q nd you would, in fact, review it; is that correct?

I would in some cases, yes.

Q nd as we just discussed, the only example you remember of an asset being higher than you thought should be was your apartment; is that correct?

There were a couple of other things, I just don't remember. You know, you are talking about a lot of years ago.

Q Would you discuss the statement with Mr. Weisselberg?

Very little.

Q When you say, "very little," what discussions did you have with Mr. Weisselberg about the statement?

I would look it over. I may have a suggestion or something, but very little. It just wasn't very important. You have made it important, but it wasn't important. It wasn't important financially. Most developers don't use accountants for this, they just take a piece of paper and write the name of the building and the address of the building and what they think it is worth, they don't go through this.

I don't believe any developer, at least that I know of, has done a statement so thorough as this. nd frankly so lowball, as this statement is much less valuable in terms of the dollar amount than the actuality of the wealth or the worth.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

Q So this statement was prepared in a manner that you agree with; that you think was appropriate?

That was fine. It was fine. I didn't go into great detail on it, but it was fine.

Q If anything, you think the statement under valued your assets; is that correct?

Well, I do by a substantial amount. It was the opposite of your case your case. Your case was that I had no money at all. I mean, looking at this year, what could I have 300-some-odd million dollars based on just saw -- 300 -- let me look. But, you know, you sued me on the basis that Trump had no money and he wrote up phony statements and defrauded banks even though they were represented by the biggest law firms in the world and the most sophisticated and best lawyers, and even though these banks were paid back in full, there was no harm; there was no anything. Everybody got their money in full; there was no victim. nd then you are saying, I deferred it. The banks don't even know what they are doing in this case. They said you paid us back.

MR. W LL CE: Your Honor, I move to strike that answer.

THE COURT: Granted.

Mr. Kise, can you control your client. This is not a political rally. This is a courtroom with a case about Executive Law section 6312. I've asked several times, asked

the witness several times to answer the questions. I don't want editorializing. We'll be here forever and we'll accomplish nothing. Maybe you should have a talk with him right now.

MR. KISE: Your Honor, I'll do as you instruct. You are in control of the courtroom, not me, and I don't mean that disrespectfully. Truly, I don't, but I'm happy to do as you instruct. gain, we are dealing with an extraordinarily unusual situation here.

THE COURT: " gain" is a bad word.

MR. KISE: I know it is.

THE COURT: I know --

MR. KISE: It's part of the record.

THE COURT: -- it's an extraordinary situation.

MR. KISE: It's an extraordinary situation. It would be most efficient, ultimately, to allow the explanations. It's a bench trial.

THE COURT: I disagree. Talk to your client for a minute.

MR. KISE: Okay. Then should we take our ten-minute break. nd I can't to do it here.

THE COURT: No. Do you want to go in the back?

MR. KISE: If we are going to have a conversation, I would ask your Honor to give us a ten-minute break.

THE COURT: Will you spend the ten minutes in the

back explaining the rules here.

MR. KISE: I think the former and again soon to be chief executive of the United States understands the rules.

THE COURT: He doesn't abide by them.

MR. KISE: I'm happy to do as you instruct. gain, I think Mr. Wallace's questions still are very broad questions. They do call -- in some sort of senses they call for narratives, so.

MR. W LL CE: I'm happy to restate my last question, your Honor, and see if we could proceed.

Q The last question was, if anything, do you think the statement under valued your assets; is that correct?

Yes, by a lot. The financial statements.

Q The financial statements.

Yes.

Q Would you discuss the valuation of individual properties with Mr. Weisselberg and Mr. McConney?

On occasion. If I disagreed.

Q Do you recall discussing with Mr. Weisselberg and Mr. McConney the valuation of Mar-a-Lago?

No.

Q Would they ever ask your opinion about the valuation of 40 Wall Street?

They might, yes.

Q Seven Springs?

little bit. It was done largely by a big law firm who testified, as you know.

Q You are referring to Sheri Dillon?

Yes.

Q Sheri Dillon did the valuation of Seven Springs?

Yes, very much her transaction. She was at a very prestigious firm, one of the most prestigious firms.

Q I think you've already said it, but you did not consider the Statement of Financial Condition to be an important document; correct?

It's nice to see, but it's not very important when it comes to borrowing money. s I think you've learned, I'm very under levered relevant to the asset value.

Q Why was it nice to see?

It's a compilation. We'll use that word that you've been using for two weeks. It was a nice restatement of assets. nd you could go up on some and down on some, but it was a nice compilation of assets. It's a great statement, particularly the year you picked, I had essentially $342 million worth of cash. It's a lot of cash. Sometimes you borrow money for tax purposes because you could deduct interest and other reasons, but it's a lot of cash. The banks came to me. They wanted to make deals with me. They liked me very much.

THE COURT: Stricken, stricken --

-- for office, your Honor.

THE COURT: Stricken. Once he got into the last sentence or two.

MR. W LL CE: Your Honor, I would ask it be stricken after the statement, "it was nice to see. "It was a nice restatement of assets."

THE COURT: Well.

MR. W LL CE: Or "it was a nice compilation of assets."

THE COURT: I don't mind the part about how much cash he had, so we'll end it after that.

MR. KISE: Your Honor, again, noted, Mr. Wallace's question, "Why was it nice to see?" When lawyers are in depositions they ask questions like "Why." That's what they do. When they get to trial, usually what they do is ask more focused questions.

MR. W LL CE: Or they sit at Counsel table and don't ask questions and they throw up a bunch of ridiculous questions.

MR. KISE: Mr. Wallace, are you done? I'm just trying to make a point for the record. nd that is, if you ask open-ended questions, then he can anticipate open-ended answers. nd it's not fair to put all this on the witness. I understand your Honor's instructions. I think the witness does, but if you ask a "why" question, why questions are usually in depositions, not in trial, unless you already

know the answer.

MR. W LL CE: The open-ended question was about why it was nice to see. I did not ask about the cash on record. It is not relevant to the answer. I think that's the issue.

MS. H BB : It's absolutely relevant. It's --

MR. KISE: That's his opinion, why. When you ask a witness why, they are going to give you an opinion as to why.

MR. W LL CE: You've now stated your objection. I'm being filibustered by the witness and Counsel. I would like to proceed.

MR. KISE: Okay.

THE COURT: Just proceed.

Q Going back to the work of Mr. McConney, Mr. Weisselberg, you understood they were making a good faith effort to put down the value of the properties; is that correct?

Yes, I did.

Q You understood that they used common sense to prepare the statements; is that correct?

I hope so. I don't know, but I hope so.

Q nd as we stated, if anything, you thought the valuations they reached were too low; correct?

bsolutely. Well, that's been proven.

Q Okay. Let's go through a few of those valuations.

MR. W LL CE: If we could turn to page eight.

(Whereupon, the exhibit was displayed on the screen.)

Q Of this document, the top we see -- this is the Niketown property. If we look at the middle paragraph here, the third paragraph, it states "The estimated current value of $348,800,000 is based on an evaluation by Mr. Trump in conjunction with his associates and outside professionals, applying a capitalization rate to the cash flow to be derived pursuant to the building's net rental stream."

Do you believe that statement to be true and accurate?

No.

Q How is it inaccurate?

The net rental stream is one way, but the bigger value here is holdup. Well, it's not a nice term in real estate, but it's called holdup value. I'm directly with that site and behind, and next to on 57th Street, which is probably the best location 57th and Fifth. It's the best location in New York.

I'm directly next to Tiffany. They cannot expand without us, and I'm directly next to IBM. So I'm between IBM and Tiffany. nd the holdup value is 348 million for holdups, you know. Probably what I mean, if you know real estate it's peanuts compared to what the value is.

So I view that as it's a great property. It's a great rental stream, as you probably have figured out, but it's got much more value as a holdup. They could come to me and offer me

$500 million for that site in two minutes if they wanted to expand or if they wanted to do something.

Q The statement, however, is the estimated current value as of June 30, 2014 --

Yes.

Q So, the $500 million price you just referred to, that is as of today; correct?

No. I would say it would be as of anytime. It just -- it's, it's --

Q I'm not asking for further explanation?

It could be any time. It could be then, it could be now.

Q So there's no change of value of, this $500 million value since 2014?

Well, I don't want to sell it. If I wanted to sell it -- I had discussions with Tiffany for years about possibly doing something. In fact, they rented from me right now for a lot of money, and but Tiffany used -- as you know, when Tiffany, as you possibly heard, when Tiffany was rebuilding their store, they came to me and they wanted to do something. nd I leased it to them for a period of time, but they would do -- they would love to be the owner of that site.

My point is, it's a holdup. It's not a nice word, but it's a holdup site. nd holdup sites in New York have made --

Q The question was, had there been a change of value

since 2014, and you said, "I don't want to sell it." So I take it the answer is no?

No. I think it's gotten more valuable like everything else.

Q So you do not think that this statement in your 2014 Statement of Financial Condition is accurate; correct?

Well, it's a great rental stream, but I think the real value here is the -- the value it would be for IBM or Tiffany if they wanted to say, and they do, at least Tiffany does.

Q This statement says that the estimate was "based on a valuation by Mr. Trump in conjunction with his associates and outside professionals." What was your role in prepare that valuation?

I think I mentioned to them the value of that is it makes a lot of money, throws off a lot of money, as you see, because you see the numbers. nd now more than ever, because Tiffany had to pay us a lot of money in order to lease it. I just wanted to lease it. We gave them a five-year lease while they built their store. They are building -- as you know, they just opened. But, they would love to own it. nd so would, I believe IBM. I don't talk to IBM at all. But they can't expand without it. I believe that -- I did mention, quickly, I didn't know if I -- this wasn't something I devoted a lot of time to, but I did mention to them there is tremendous holdup value on that site.

gain, 57th Street. You have Tiffany, IBM, and you have my building right in the middle of them. nd if they want to expand anywhere, they have to go through my building. nd I bought the air rights --

THE COURT: Hold on.

Excuse me. I bought the air rights over Tiffany, so they can't go up.

THE COURT: In addition to the answers being nonresponsive, they are repetitive, and we don't have time to waste. We have one day with this witness.

Mr. Kise, can you control your witness, because I am considering drawing a negative inference to any questions that might be asked.

MR. KISE: Well, I would urge your Honor not to draw the negative inferences. We have a record on that, which I won't go into, but I think the witness is doing his best to answer the questions and be as responsive as possible.

If you think that it would be beneficial for us to take a break, I'm happy to do that. This is your Honor's courtroom, so I'll do as you suggest. But, again, there -- the questions are calling, maybe not as broadly as the answer, but they are not tight questions. I mean, we are seeing "why" questions; we are seeing "how" questions. I mean, this is not one someone who is a professional lawyer

or a witness, so he's answering based on his responses and the reactions to the questions.

Q Mr. Trump, you testified under oath many times; correct?

Yes.

Q The question was, "What did you do, based on an evaluation of Mr. Trump in conjunction of his associates and outside professionals", and you said you talked to them about the holdup value.

Is there anything else you did in preparing this valuation in 2014?

No, I don't think so.

Q Did you ultimately approve this valuation?

No.

Q Did you approve the issuance of this statement?

I think they did something with it, because when I told them about the holdup value, they said, "Well, you're right."

Q Who is "they"?

The people compiling the statement. It could've been Mazars, too.

Q Did you --

I didn't make a big deal.

Q I didn't ask you if you made deal. I'm asking if you told Mazars about the holdup value for the 2014 Statement of Financial Condition?

It's a long time ago. I probably did, but I told Jeff and I told llen.

Q Okay.

Do you believe that the stated value of $348 million was based on true and accurate information?

Well, as a holdup, I think it's very low.

Q I'm not asking about the holdup. I'm asking about whether you have an understanding of whether this valuation in your Statement of Financial Condition was based on true and accurate information. It's a yes or no question?

Well, I'll say it differently. I wouldn't sell it for that number. If somebody offered me that number, I wouldn't sell it for that number.

Q I'm not asking your individual valuation. I'm not asking for an analysis. I'm just asking if whether the information that Mr. McConney and Mr. Weisselberg used was true and accurate when they reached this number?

I guess so. I really can't answer that. I guess so. It's a number that I wouldn't sell it for.

Q Okay.

MR. W LL CE: Can we move down to the bottom of this page.

(Whereupon, the exhibit displayed on the screen was scrolled through.)

Q We have the header for 40 Wall Street, and if we flip

over the next page we'll see the valuation for 40 Wall Street. The top paragraph states "The estimated current value of $550,100,000 is based upon a successful renegotiation of the ground lease and an evaluation made by Mr. Trump in conjunction with his associates and outside professionals of leases that have been signed or are currently the subject of negotiation. nd a capitalization rate applied to the resultant cash flow to be derived from the building's operations."

Do you believe that statement I just read is true and accurate?

I don't believe -- it depends on how you look at it, but I don't believe it talks about the making of the building the condominium, a residential condominium, which is absolutely a perfect use for that building.

Q My question is --

Even though it's full.

Q -- is this statement true and accurate?

Well, let's see. So number one, you -- again, you go back a long time. re you still in 2014.

Q We are still on the 2014 statement.

Five-year statute of limitations. You are still in 2014. So, it says here based upon successful renegotiation of the ground lease. Well, that was done. I did that. I made a new 100-year lease, and a very good lease, and long term, very long term. I got a "lollipop" in the lease. It's a legal term,

believe it or not, but it's a lollipop, which allows you to build condominiums because you own the land. You own a piece of land. That gives you the right to build condominiums. So this would be a low number, because the highest and best use for that building is the -- it's -- I think it's the tallest building in downtown after the World Trade Center, but there's a dispute about 60 Pine Street, but, whatever.

The tower is of perfect measurement for turning them into condos. nd I have the right to do that, and at some point we, or somebody, will do that. That's the highest and best use. In which case, $550 million is a very low number. ll you have do is look at a picture of the building and say "That building" -- you just look at it and you say that's worth a lot more than $550 million. If you want to put up the picture.

Q My question is --

THE COURT: Mr. Kise, that was a simple yes or no question. I don't have it right in front of me, but the question was whether he believed that was an accurate number. We got another speech. I would beseech you to control him if you can. If you can't, I will. I will excuse him and draw every negative inference that I can. Do you understand that?

MR. KISE: I certainly understand, your Honor. But I will say this: The purpose of this trial is to determine the veracity of the Statement of Financial Condition, in

part, to figure out whether there is intent, so I would think, respectfully, your Honor, of all witnesses, would want to hear everything that this witness has to say by way --

THE COURT: No, I do not want to hear everything this witness has to say. He has a lot to say that has nothing to do with the case or the questions.

MR. KISE: gain, your Honor, I will -- I have to say that you're determining what's going to happen here. So I would urge the Court to take in all the information possible, including what this witness has to say about the numbers on the statement, what he did, why he did it. I mean, all of those circumstances. Do we really want to come back here in a few weeks and go through it that way?

I mean, with this witness I would suggest it's far more efficient to listen to what he has to say and take it in, and then you have an understanding of what he has to say. nd I don't think it's fair to draw a negative inference based on his explanations simply because he wants to explain why he got to where he was. We are talking about ten years ago.

nd so I, ordinarily with a witness, you might think differently, but this is a situation where you have, on the stand, a candidate for presidency of the United States. Having him here takes away from that effort. nd

so the most efficient way, I would submit to the Court, to get through this is to listen to what he has to say, and then you weigh it one way or the other.

I don't think you should respectfully draw a negative inference. nd, again, I'm happy to discuss this and take a break. More than happy to do that. I'm not saying not to do that.

But I just would like the Court to take in that perspective, because this is a different situation. It's unusual situation, and it would be most efficient. The Court needs to hear what he has to say about what happened with the statements and why he thinks they are viable, and why there is no intent.

He's describing to you why there's no intent to mislead anyone with his answers. That's what he's doing. nd so I would think that's highly relevant and highly probative. If you want to do it the way where we have yes or no questions and then we go back and do it that -- it's subject to your direction, but I think the most efficient way is to listen to what he has to say. I'm happy to talk to him about making the answers more contained. We certainly don't want to waste anymore time than necessary, and spend anymore time than necessary, but this is, as you've acknowledged this a unique situation.

MS. H BB : If I may also add, your Honor. I had

to cross examine Mr. Cohen. If I could get him to answer the questions in yes or no, I advise Mr. Wallace to look at that cross examination. It was far more succinct.

The reality of the situation is, he put up two paragraphs which talk about interest rates, the current value, as well as tenants, and et cetera, et cetera, et cetera. If he would like to narrow it, then you narrow it, but President Trump is answering about 40 Wall Street and the values, the interest rates, the purpose of the SOFC; that is absolutely relevant.

So I'm going to push back and say it is time to start pushing pack on the G. Kevin can try to ask better questions, and then we'll move on. But he is relevant. He is talking about two paragraphs of information, and he's explaining them. sk succinct questions you'll get SUCCINCT answers.

THE COURT: Well, Mr. Kise, I think you said several times we should hear what he did, what the witness has to say. No, I am not here, and these people are not here, and the ttorney General is not here to hear what he has to say. We are here to hear him answer questions, and most of the time he's not. He goes into speeches. It's very simple. Is this an accurate number? We don't need a whole speech.

MS. H BB : It's not that simple. I apologize.

It's not that simple, and you are here to hear what he has to say.

THE COURT: No, I'm not here to hear what he has to say.

MS. H BB : Thank you.

THE COURT: I'm here to hear him answer questions. Sit down already. Mr. Kise, Mrs. Habba, sit down.

Mr. Wallace, continue.

THE WITNESS: This is a very unfair trial, very, very. nd I hope the public is watching it.

Q Mr. Trump, was the valuation presented here based on leases and capitalization rates true and accurate to your belief?

It could be, but again, what I told you is a building has many different forms of value. nd this building, the most valuable -- the most valuable asset here is making it into condominiums. That would be -- it will happen as soon as interest rates go down and as soon as the City maybe comes back. It would be nice if it came back; wouldn't it?

But the value of this is -- the big value of this is making it into a condominium, residential condominium.

Q Could we put up --

It would be one of the biggest jobs in the City.

MR. W LL CE: Could we put up Plaintiff's Exhibit 635. It's already in evidence, but I have an extra

copy for the witness.

(Whereupon, the exhibit was displayed on the screen.)

Q There is a very thick document. I'm not going to ask you to go through all of it, but it is an e-mail from Jeff McConney to Jack Weisselberg, Ladder Capital, attaching a modification of the ground lease. The e-mail is dated pril 10, 2015. If you go to page three of this document.

(Whereupon, the exhibit displayed on the screen was scrolled through.)

Q I'll put it up on the screen for you. You could see at the top. Title says -- this is a resume of the fourth modification of the ground lease on 40 Wall Street, NYC. We flip over to page four.

(Whereupon, the exhibit on the screen was scrolled through.)

MR. KISE: Do we have a copy of this document for the witness?

MR. W LL CE: He has a copy.

MR. KISE: I'm sorry?

MR. W LL CE: It's already in evidence.

Q If we look at the header. "Condominium conversion right." It states "Paragraph four eliminates the tenant's condominium conversion rights which it had under Section 2709."

Do you recall that in this amendment to the ground

lease your condominium conversion rights were eliminated?

No, because I have a right to do a co-op. You could do condo -- you could do a condo, but I have the right to do a co-op. I believe I have a right to do condo, because we have a lollipop clause, but I have a right to do a co-op.

Q If we go back to the Statement of Financial Condition; that's Exhibit 730.

(Whereupon, the exhibit was displayed on the screen.)

Q We were on page nine?

(Whereupon, the exhibit displayed on the screen was scrolled through.)

Q Did this valuation include the lollipop conversion that you were talking about?

Um, I don't know. It was around that time. I renegotiated the lease and got a new lease, and one of the things in the lease was a lollipop conversion.

Q My question is about this statement though, which says "That the valuation is based on leases that have been signed and capitalization rate." There is no mention here of converging to condos, is there?

Well, I know you are asking -- you are talking about the estimated current value. nd the estimated current value would be co-op, condo.

Q I'm not asking about what you could do. I'm asking

about what was actually prepared?

I don't know because I didn't do it.

Q Okay.

Was the stated value -- let me ask, did you approve of this valuation?

I accepted it. It was just one of many -- this is a very big statement. I have many different things, and this is one of many values. I accepted it. I didn't say, oh, gee, it should be higher or lower.

Q nd you approved the statement's issuance?

Yeah, I accepted it. Other people did it, but I didn't say make it higher or make it lower.

Q Was the $550 million valuation here based on true and accurate information?

I assume so.

MR. W LL CE: If we could move on to page 20 of 26 here.

(Whereupon, the exhibit was displayed on the screen.)

Q nd if we see at the bottom of the page is the listing for the mansion at seven Springs. I'll direct your attention to the paragraph -- first sentence in this listing that says " n entity wholly owned by Mr. Trump acquired a property known as "The Mansion" at Seven Springs in Bedford, New York, which consists of over 200 acres of land, a mansion and other

buildings. This property is zoned for nine luxurious homes. It has been valued at $291 million based on an assessment made by Mr. Trump in conjunction with his associates of the projected net cash flow, which either derived as those units are constructed and sold, and the estimated fair value of the existing mansion and other buildings."

Do you have an understanding of whether that $291 million valuation is true and accurate?

I thought it was too high, and we lowered it. I guess the next statement or sometime, but I thought it was too high. This is the equivalent of Mar-a-Lago in New York, and I think it sells for -- I think it's valued -- I think the value is higher if you don't build additional housing. This is the kind of -- it's a magnificent place. This is the kind of place that somebody will pay a lot of money for, I think more money than if you build nine, or 16, or 20 units of other homes on the site.

I think the site, as I remember, is 213 acres, and I think it's much more valuable, actually, without the building. I think it's more valuable the way it is.

MR. W LL CE: Your Honor, I think maybe we may need to take our break now, and if Mr. Kise could talk to the witness, I think I would appreciate it.

THE COURT: Let's take -- how long a break would you suggest? Make it 15 minutes so it's easy. 15-minute break.

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.)

THE COURT: Mr. Wallace, please continue.

MR. W LL CE: Thank you, Your Honor.

Q Mr. Trump, when we broke we were looking at the valuation for Seven Springs in your 2014 Statement of Financial Condition. I believe you said that that valuation, you said, eventually dropped that valuation; is that correct?

Yes.

Q Did you eventually take a tax deduction based on easement donation for Seven Springs?

I believe so, yes.

Q You recall receiving appraisals showing that the total value of the Seven Springs before the easement was $56 million?

No, I don't know. It could have happened, but I don't remember.

Q Do you remember if the easement appraisal was the reason for dropping the value of Seven Springs?

No. The person that did that, I believe, was Sheri Dillon. That was the law firm that we mentioned, and a very good one, very prestigious. nd she really was responsible for doing it. It was sort of, I think, her idea to do it.

Q So when you say the person that did "that" the "that" that you are referring to --

Easement.

Q -- is the easement donation itself?

Yes.

Q So if you did not decide to lower the value of Seven Springs based on the appraisal from the easement donation, what was the basis upon which you decided to drop the value?

Well, I thought it was high. I mean, I saw that. When I saw it the statement was done, and I said I thought that was high. That was one of the ones that was high. That doesn't mean it is not going to get that kind of money, because that's the kind of a place that would get that kind from the right person. But I thought it was high. nd they dropped -- they dropped the value.

Q nd so in your view, the estimated current value of Seven Springs as of June 30, 2014 was not $291 million; is that correct?

I thought it was high. Maybe I'll sell it for more than that, you don't know. With that kind of a property, you never know, but I thought it was high.

Q Is the Seven Springs easement donation under review by the IRS?

Not that I know of. It might be.

Q Was it at any point under review by the IRS?

I don't know. I don't know.

Q Do you remember when you decided to lower the value of Seven Springs?

Well, I guess probably when I looked, I don't know if

I looked immediately upon -- because again, I haven't spent a lot of time on these statements, because I realize the value of these statements is not that important. But when I looked at it, I thought it was high and I said, you have to lower it.

Q So the answer is, no, you don't remember when you decided to lower the value?

I don't remember. It might not have been immediately, but it was, you know, within a period of time.

MR. W LL CE: If we could turn to page 21 of 26.

Q This is a section of your Statement of Financial Condition entitled Partnerships and Joint Ventures. nd there is a reference to a joint venture that is 1290 venue of the mericas in New York, New York; and 555 California Street in San Francisco, California.

re you familiar with those properties?

Yes.

Q Underneath that it states: "In May 2007 Mr. Trump and Vornado Realty Trust became partners in two properties; 1290 venue of the mericas located in New York City and 555 California Street (formerly known as Bank of merica Center) located in San Francisco, California."

Mm-Hm.

Q If we look down a few more paragraphs it states: "Mr. Trump owns 30 percent of these properties."

Is that accurate?

Yes.

Q nd so you do not control the partnership with Vornado; is that correct?

In many ways it is better, because I have no liability. I am a limited partner, that's limited liability. I have a 30 percent interest, but my interest I don't have to put up any money. I didn't put up any money and don't have to. I have a very good relationship with them. They are great, and very professional. But it is also a limited -- it was limited. I had no liability for what I own. So, it was a lot of people don't understand that. They think that a limited partnership gives you limited rights. In this case it gives me limited liability.

Q The question was: So you do not control the partnership with Vornado; is that correct?

I have 30 percent of the partnership, yes.

Q nd so you do not control the partnership?

In the true sense, no. I will say this, we have a very good relationship and --

THE COURT: No. No. You answered the question.

-- never had a problem.

THE COURT: nd we appreciate that it is the true answer. Thank you.

Q The next paragraph states: "The estimated current value net of debt of $816,900,000 is based on an evaluation

made by Mr. Trump in conjunction with his associates and outside professionals."

Is that a true and accurate statement that you valued the property based in conjunction with your associates and outside professionals?

I don't know, because I am not familiar with the number.

But I do know that, as you know, the one building is the Bank of merica building, one of the most, I think, one of the, I think, the best building on the west coast. nd the other is a very great building in Manhattan on Sixth venue, venue of the mericas. We refinanced that building about two and a half, three years ago at a very, very low rate. nd there were valuations placed on it then, and if you want I can get you that information, but the valuations were very high.

Q The question was whether you made an evaluation in conjunction with your associates and outside professionals of the value of those two properties?

I don't know. It doesn't sound high to me. Not for these two buildings, so I don't know.

Q I am going to ask it again.

The question is whether or not you made an evaluation of the property value.

Is that a double property right there? Is that both properties?

Q Both properties.

It doesn't sound high. I don't know if I was involved in that. I remember looking at it, but it didn't get my attention. I think it is worth more than that.

Q Do you remember playing any role in evaluating the estimated current value of these two properties for any years between 2011 and 2021?

2021?

Q Correct.

You mean bringing it back to two --

Q ll the way, for the last ten years. That ten-year period.

By the way, that was the hottest period ever for office properties. So I think you should know that. nd you don't want me to talk much, but I think you should know that.

No, I think the value sounds very reasonable. I don't know. I don't know. I doubt it. I don't know that I would sell my interest for that, actually.

MR. W LL CE: I am going to hand the witness a document or ask the officer.

THE WITNESS: nd excuse me, the buildings have been refinanced, two years ago.

MR. W LL CE: There is no question pending.

Q Mr. Trump, I have handed you a document that has been marked as Plaintiff's Exhibit 3344. This is an e-mail from

Jeff McConney to Donald Bender entitled Ferry Point. It is dated October 1, 2012.

Your Honor, I ask this document be entered into evidence.

MS. H BB : Objection, statute of limitations.

THE COURT: Overruled. It is in evidence.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 3344 by the Court.)

Q t the top there is an e-mail from Mr. McConney to Mr. Bender, it says: "Doc, I am almost done revising last year's footnotes. llen wants S to speak to DJT tomorrow about the Vornado buildings. I am going to send you a few e-mails with some info on new properties, Doral and Charlotte, and an update to the Scotland footnote."

I want to ask if this refreshes your recollection about whether you had any conversations with Mr. McConney and Mr. Weisselberg about the value of the Vornado properties?

bout the Vornado buildings?

Q Correct.

No, but I probably did.

MR. W LL CE: If we can go back to the Statement of Financial Condition; and if we could blow up the section with the valuation there, the estimated current value and amount of debt.

Q Mr. Trump, do you believe that the stated value here of $816 million was based on true and accurate information?

I think so. I hope so. I can say, if you go to 2021 where it is more familiar to me, because it is more updated, I think that would be a low number.

Q Were you involved in the preparation of the 2021 statement?

No.

Q Who was responsible for the preparation?

I don't know. That was when it was in trust, so I assume llen and Jeff and perhaps they dealt a little bit with Don and Eric. But they were not involved with these statements very much at all, as I understand it.

Q Would you get copies of the statements in 2021?

I hadn't seen it. I was so busy in the White House. I was really -- my threshold was China, Russia and keeping our country safe.

Q My question is actually about 2021. Did you see a copy of the 2021 statement?

I don't believe so.

Q nd just to clarify for the record, you weren't President in 2021, correct?

No, I wasn't.

MR. W LL CE: If we could turn back, if we could go to page 23 of 26 in this document.

Q nd if we look at the bottom of the page, on the category of other assets it says: Trump Tower. Mr. Trump owns a triplex apartment on the top three floors of Trump Tower (see note 3.)

I'll just represent to you that note 3 doesn't discuss your apartment, it discusses the building.

Were you involved in the valuation of your triplex apartment for this statement of financial condition?

No. What date is this?

Q 2014.

No, I wasn't.

Q Did there come a time when you determined that the valuation for your triplex apartment was too high?

Yes, I did.

Q fter you made that determination, did Mr. Weisselberg and Mr. McConney lower the valuation of your triplex apartment?

I believe so, yes.

Q Did they do that at your direction?

I told them I thought it was too high. I thought the number was too high. nd I know they lowered it after that, yes.

MR. W LL CE: If we could pull up Plaintiff's Exhibit 758. This is a spreadsheet, so it is only going to be up on the screen here.

nd if we could go to row 893.

Q This is a category Other ssets. nd if we look down, if we could go down to rows 969 and 971, this shows the valuation of your apartment.

I'll represent to you that the valuation of the apartment is not actually in the Statement of Financial Condition, it is incorporated. So this is where we are going to try and find it.

I think that's why I missed it also.

Q Okay. nd if you look you can see here, I'll represent to you that column G are the values for 2013. Column H is the value for 2014. So you can see that it goes from $116 million in 2013 to $327 million in 2014.

nd so it is your understanding that the $327 million valuation is too high?

Yeah. nd the reason I didn't pick it up sooner is that I thought it was high, but it is not mentioned -- it is not broken down in the financial statement, so I wouldn't have known.

Q Okay. nd I am sorry, I apparently -- this is the Statement of Financial Condition for 2017, so I misrepresented.

That's okay.

Q The 2017 number is in G, and the 2016 number is in H. So I apologize.

MS. H BB : Sorry, just to make the record

clear, Kevin, this is the backup, not the SOFC?

MR. W LL CE: Correct.

MS. H BB : I think you said SOFC on the record.

MR. KISE: nd this is the backup for 2016?

MR. W LL CE: 2017. So showing a change from 2016 to 2017.

Q nd this change in valuation came at your direction?

Probably. I mean, I thought it was too high. I don't know what is too high anymore because I am seeing things being sold at numbers that are very high. But I thought it was too high, so I assumed that they didn't.

Q Do you have an understanding of why the valuation was too high?

Well, I have heard different reasons. But one of the reasons was they did it off a broker. broker was sending lists of apartments and they had it down at 30 -- 30,000 feet. Is it 30?

nd another one was that, you know, I have the roof, we have access to the roof which is very big. nd when you add the roof it is not that far off.

nd there are a lot of other reasons. nd there is another reason, they just made a mistake. nd that's why we have a disclaimer clause in case there is a mistake. There is a disclaimer clause, where you don't have to get sued by the ttorney General of New York.

Q Mr. Trump, as you sit here today, do you know how big your triplex apartment is?

You know, you wouldn't -- you wouldn't know. I have heard, obviously, because of the trial, they say 11 to 12 to 13,000 feet.

Q t your deposition testimony, does it sound correct that you testified that each floor of Trump Tower is about 10,000 square feet?

s the floor. nd it is a triplex, and I think they probably took 10,000 feet per floor. I could see how it was done. They took 10,000 feet per floor, because the floors are, I believe, about 10,000 feet, and they went times three. But the -- but they didn't take out, you know, elevator shafts and different things.

Q Okay.

MR. W LL CE: I would like to go back to the 2014 Statements of Financial Condition. F if could go to page ten of 26.

Q This is the heading for club facilities and related real estates. nd if we scroll down, this is the listing for Mar-a-Lago.

If you look, I'll read it into the record, it states: "Mr. Trump acquired this property in 1985 and transferred ownership to a wholly owned limited liability company in 1995. It is now an exclusive private club which consists of 117

rooms.

Formerly known as the Marjory Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages."

I am going to direct your attention to where it states that the property is an "exclusive private club." Is that correct?

Yes.

Q Okay. nd is it correct that the ownership of the club was transferred to a wholly owned limited liability company in 1995?

I guess so. If you represent, I would say yes.

Q Well, I am asking if you know whether or not the representation here, which is that it was transferred to a wholly owned limited liability company in 1995; do you know if that's correct?

No. But it is probably so because I have done that with many properties over the years.

Q Is Mar-a-Lago today still wholly owned -- is the ownership of Mar-a-Lago today still underneath a wholly owned limited liability company?

I believe it is the same.

Q nd there is no separate valuation for Mar-a-Lago on the Statement of Financial Conditions in this century, correct?

You know, I have no mortgage on Mar-a-Lago, no debt. There is no debt. There was no reason to do it. So I don't know if they did it or not. But there is no debt, zero, on Mar-a-Lago.

Q My question is just that the price of Mar-a-Lago or the, I should say, estimated current value of Mar-a-Lago is not listed here, is it?

No, it is not. It is not.

Q Okay.

MR. W LL CE: If we could pull up the supporting data for this Statement of Financial Condition, Plaintiff's Exhibit 719.

Q This is, I'll represent to you, the supporting spreadsheet for the 2014 --

MR. W LL CE: Do I have this wrong?

Okay. If we could go down to row 189. nd actually go down to the club facilities. Sorry 205.

Q You see the entry is at 207 for Mar-a-Lago, and underneath that it states: "Value if sold to an individual."

That is referencing to selling the property to an individual as a residence; is that correct?

Yes, that's right.

Q Did you approve valuing Mar-a-Lago as if it could be sold to an individual as a residence?

I personally -- well, did I approve it? On this? I

don't know. There are two ways you can approve it, as a club or as a residence or as both. It is most valuable as both.

Q nd here it is being valued as a residence, correct?

I guess so. What is the number?

Q We will get to the number in a minute. I was just wondering, did you at some point discuss with Mr. McConney or Mr. Weisselberg valuing Mar-a-Lago as a private home?

I don't remember that, no.

MR. W LL CE: If we go down to row -- just go to the bottom, row 242.

Q Do you see a value listed for Mar-a-Lago --

Yes.

Q -- is $405,362,123 as of June 30, 2014.

Did you approve that valuation number?

No. But it is a very low number.

Q So you -- do you agree with that number?

No, it is much -- it is much more valuable than that, much, much. We are bringing in an expert so that they will explain to you what it is worth.

Q I'll ask you a question. You believe as of today Mar-a-Lago is worth at least 1.5 billion; is that correct?

How much.

Q 1.5 billion?

I think between a billion and a billion five, yes.

Q s of June 30, 2014 though, do you have a view as to

how much Mar-a-Lago was worth at that time?

More than this number. I don't know, but much more than this number.

Q Mr. Trump, we are going to hand you a copy of a document that is already in evidence. This has been stamped as Plaintiff's Exhibit 1013. This is a deed of development rights for the Mar-a-Lago club. nd I'll direct you to it up on the screen.

If you could turn to page two of the document just quickly. Do you see your two signatures?

Yes.

Q There? Okay.

If we go back to the first page, under the third "Whereas" clause, and I'll read it into the record for you and highlight it here.

It states: "Whereas, the club and Trump intend to forever extinguish their right to development or use the property for any purpose other than club use."

Was it in fact your intent to forever extinguish your right to use the property for any purpose other than club use?

Well, when you say, "intend" intend doesn't mean we will do it. That's number one. It says "intend." I intend. But we have the right to change it back to a house. I intended, I would always leave it as a club; or a club and a residence, which is really the best combination, which is what

it is right now. It is a residence and it is a club, and a very successful club at that.

Q I take it your answer was that, yes, you did intend to do this?

Yeah, I intend. I intend. But I also have the right, if I wanted to, there is no reason to do that, to switch it back.

Q Switching it back would be contrary to forever extinguishing something though, wouldn't it?

No. It says to intend. It doesn't say that. It says to intend. It doesn't say I will. It says intend.

But I don't mind leaving it as a club. In fact, if somebody actually wanted it, the smartest thing to do, because there are a lot of advantages to the club status, the smartest thing to do would be to have a club and have one member; and that would be the member that lives in the club. But it is much more valuable and we will show that in two weeks or five weeks or nine weeks or whenever this thing goes, that it is most -- its biggest value is to be able to use it as a club and residentially simultaneously.

Q If we look at the next paragraph it states: "Whereas, the National Trust for Historic Preservation in the United States (The National Trust) is the grantee of a Deed of conservation and preservation easement recorded on pril 6, 1995, in official record book 8691, page 764, of the public

records of Palm Beach County, Florida (The preservation easement).

s reflected here you had in fact granted a preservation easement to the National Trust for Historic Preservation in 1995; is that correct?

That is correct.

Q If you look down at the next paragraph it states: "Whereas, the preservation easement limits changes to the property including, without limitation, the division or subdivision of the property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the property as a single-family residence estate. The construction of new buildings and the obstruction of open vistas."

Yeah.

Q s reflected in the 1995 preservation easement then, it was prohibited to renovate the interior of the mansion in a way which may be necessary or desirable for the sale of the property as a single-family residential estate; is that correct?

It was a single-family home. It was the home of E.F. Hutton and Marjory Merriweather Post. I don't think anybody would want to touch it. It is designed as a home. nd it was converted to a club very successfully, and it does great. nd that's where it is. But this is, you don't have to

do anything to convert it.

nd also, the easement really talks about views. It is only a view easement. If I want to build something, I go to the National Trust. I built a ballroom as an example. I built a very big ballroom there. The ballroom you mentioned in your last page was built by me. nd it is very large, beautiful. nd what happens is, if I want to development other parts of the property, but not in the view corridor. It is called a view corridor. It is a certain view corridor from the main windows of the living room.

But on the side, what is called the side corridors, I have a right to develop, if I want to. But this is a little like we were talking about Seven Springs, this property is more valuable without building houses on it. It is much more valuable, actually, in this case.

Q fter this Deed of Development rights, you stated publicly that Mar-a-Lago would forever be a club; didn't you?

That is what?

Q You stated that Mar-a-Lago would forever be a club; is that correct?

No, I don't think so. I mean it says "intends." I would personally never change it. If somebody later on, including my children, if they want to change it, I believe they would have the right to do that, if they wanted to.

Q Mr. Trump, the court officer is handing you a

document that has been marked Plaintiff's Exhibit 1730.

(Handing)

Q This is an article from the Palm Beach Post dated ugust 27, 2023. nd if you look at the bottom of the page there is a quote from you. It states: We waited until it became a great success, Trump said, and the Mar-a-Lago club is a great success. It will forever be a club.

That was your statement, correct?

Yeah.

Q In 2003, that the Mar-a-Lago club would forever be a club?

Well, I hope so. I mean, I think that was said with bravado as opposed to with legal intent. It will be for, you know, as long as I am around, it will be a club. nd I live there.

Q nd by making -- I apologize for interrupting.

Yeah. Please.

Q By making sure it was forever a club, you paid less in taxes on the property; is that correct?

club will pay less in taxes, correct.

Q nd that says that, if we look at the forth paragraph here, it states: We pay less tax, Trump said Tuesday, now we are treated like the bath and tennis and the other clubs?

That is correct, pay less taxes. Not too many clubs, you pay much less tax.

MR. W LL CE: Your Honor, I ask this document be entered into evidence.

MR. KISE: For what purpose are they introducing the document?

MR. W LL CE: He has admitted these are his statements at the time.

MR. KISE: So all of his statements in here will be admitted?

MR. W LL CE: The statements of Mr. Trump only.

THE COURT: It is in evidence.

MR. KISE: The statement where it says if it didn't work out as a club it could go back to some other use, that's acceptable as well?

MS. H BB : The one you didn't show the witness. The one on the bottom.

MR. W LL CE: I'll ask him about that then.

MS. H BB : Yeah, you should.

Q Mr. Trump, if you look to the second to last paragraph on the page, we will highlight it for you.

It states: If it didn't work out as a club we could have gone back to some other use; is that accurate?

I believe so, yes.

MR. W LL CE: I believe Your Honor has overruled the objection and this is in evidence; is that correct?

THE COURT: Yes, the entire document is in

evidence.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1730 by the Court.)

Q Mr. Trump, I would like to hand you another document. This one is marked as Defendant's Exhibit 478.

Mr. Trump, in order to win approval to convert Mar-a-Lago to a club, you took the position that it was impractical for a single individual to continuously own Mar-a-Lago as a private estate at his or her sole expense; is that correct?

Yeah probably in those days. That was a long time ago.

Q Well I can show you, this is -- this document is the Mar-a-Lago, if we turn to the second page, please?

Sure.

Q It is the Mar-a-Lago club special exception use and preservation plan. Do you remember submitting this plan to Palm Beach in order to convert?

Yes, I did.

MR. W LL CE: Your Honor, we ask that Defendant's 478 be marked into evidence.

THE COURT: Granted it is in.

(Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 478 by the

Court.)

Q If we look at page six of this document, I believe.

It states at the top: s to item (1)

I'll represent to you that item 1 is private ownership of Mar-a-Lago.

It states: "It is impractical for a single individual to continuously own Mar-a-Lago as a private estate at his or her sole expense. When the Post Foundation marketed the property after its return to the foundation from the U.S. government, it was almost impossible to sell. bout 80 qualified buyers, thoroughly screened, inspected Mar-a-Lago and elected against even making an offer.

H. Ross Perot was one prospect. lthough 'everything is for sale at a price' no one would step forward to make offers for this so called 'white elephant.'" nd cites to articles from the Miami Herald and the Palm Beach Post Times.

Is it correct, was this statement correct at the time it was made?

Yeah. I got luckily.

Q I take it, it is now your position that it is no longer a white elephant?

That's true. There is a man building a house down the road spending one billion dollars to build it, and it ain't Mar-a-Lago. They are spending 1 billion down the road.

Q If we could go back to the Statement of Financial

Condition, that's Exhibit 730.

Mr. Trump, I would like to focus on your Golf Club at berdeen. So if we could go to page 16 of 26.

Here we see the listing for Trump International Golf Club in Scotland- berdeen. I am just going to read into the record the description of the club here. It states: "Mr. Trump, through wholly owned entities, acquired 500 hectares (approximately 1,236 acres of land) on the northeast coast of berdeenshire.

The development received outline planning permission in December of 2008 for a world class, Martin Hawtree designed championship golf links golf course, suitable for hosting major events; a second future award winning 18-hole course; a luxury clubhouse; a state-of-the-art driving range, and golf academy; a tennis center; an equestrian center; a luxury five-star 450 room hotel with associated conference and banquet facilities; an full-time spa; a residential village consisting of 950 holiday homes; and 500 single-family residences and 36 golf villas."

Start there. Was that description of the club as of June 30, 2014 true and accurate?

Probably. But you know, we could do more or less. We could do a bigger job, a smaller job.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

Q Do you believe it was accurate, that's as of December 2008, you had received outline tenant permission for a residential village consisting of 950 holiday homes?

Yeah.

Q nd 500 single family golf residences and 36 villas?

Yes, berdeen is the oil capital of Europe, very rich.

THE COURT: Irrelevant. Irrelevant. You answered the question.

THE WITNESS: It is.

Q There's no valuation value for the berdeen property listed in this paragraph; correct?

I don't know.

Q Okay. It's not.

MR. W LL CE: So why don't we put back up Plaintiff's Exhibit 719.

(Whereupon, the exhibit was displayed on the screen.)

Q This is the supporting spreadsheet for the 2014 Statement of Financial Condition. If we could go to row 481, please.

(Whereupon, the exhibit displayed on the screen was scrolled through.)

Q 481, here we see the listing for Trump International Golf Club, Scotland. That's your club at berdeen; is that correct?

Yeah, right.

Q If we look over in column G, we could see the valuation for 213 -- I will rephrase that question. In column G we see the valuation, as of June 30, 2013, in column H, we see the valuation as of June 30, 2014. Do you see that? Or do you see the dates?

Do I see what?

Q The dates at the top. G is -- I'll direct you to it.

Yes, yes. I do.

Q June 30, 2013, H is June 30, 2014?

Right.

Q Okay. Let's go down and take a look at those valuations, which I believe are down on 43 or 46.

(Whereupon, the exhibit displayed on the screen was scrolled through.)

Q No, I was wrong. If we stop here, it's in 527.

So you could see the valuation in -- as of June 30, 2013, is $191,165,600, and as of June 30, 2014, the valuation is $435,562,426?

Yeah.

Q Do you see that difference?

Yes, I do.

Q You did not build a second golf course at berdeen between June 2013 and June 2014?

I'm building it now.

Q So you had not done it by June 2014?

No, I didn't. The first one, it was very successful, and then the second one. nd then basically you would have a thousand acres of land -- you have 1230 some-odd acres. It's lot of land on the ocean. nd it was a big development job. nd I could do it anytime I want. I just don't really want to do it. I don't really need to build 2,000 or 1,000 or 500 houses in berdeen. I don't want to do it.

This was an artistic expression. I think it's the greatest golf course ever built. I believe it is. nd we've gotten reviews saying that we are close to that. It's one of the greatest pieces of land I've ever seen. nd we have, now, one course, and we built a clubhouse, we built the roads, we built everything. I'm no rush to build. I'm not looking to build a lot things. I'm doing other things right now. But it's an unbelievable site. We could build more than what you showed in the plan, or less than what you showed in the plan. But I don't want to build anything. I just want to sit with it. It's called an investment.

Q So I just want to make sure I heard that last part. You are not planning to build anything as of today?

Well, I'm building right is now.

Q part from the golf course, you are not planning on building any housing developments?

I'm sort of preparing the site, because I'm putting up

the second course. nd it's under construction. It will be done in a year. nd then we have all this -- we have a thousand acres of land that we can do whatever we want with, but I'm in no hurry to do anything with it. I have enough things to do.

Q nd your statement was, "I'm not looking to build a lot of other things right now"; is that correct?

I'm not looking to -- yeah, as I said, I'm not looking to go to Scotland and build a big development, but it's got tremendous value.

Q So we got away from what the actual question was, which was, I believe that you did not build a second golf course at berdeen between June 2013 and June 2014; correct?

Yeah, nor was I supposed to.

Q nd you did not build a new hotel at berdeen between June 2013 and June 2014 did you?

Because I didn't want to.

Q nd you did not build any homes at berdeen between June 2013 and June 2014 did you?

No. I have a castle that we renovated, but no. I want it just the way it is, and at some point, at some point maybe in my very old age I'll go there and do the most beautiful thing you've ever seen, but I just don't have -- I don't want to do it now. It's an unbelievable piece of property.

Q I'm focused, then, on where we get the $245 million increase in the value of the property from 2013 to 2014. So I

would like us to go back up to -- if we look at. Let's go down to see 489 at the top. I'll represent to you -- well -- no, go down a little more.

(Whereupon, the exhibit displayed on the screen was scrolled through.)

Q That's it. Right there. So you'll see the valuation for the club, the golf club, the land allocated to hotel and residential, the remaining value for the golf courses, stays about the same. It goes from $76 million in 2013 to 2014. The remainder of the value for 2013 comes from the line item valuation per George Sorial e-mail, 9/6/2011, in addition to DJT Capital contributions.

George Sorial was a lawyer in the Trump Organization; is that correct?

Yes.

Q He was not a valuation professional; is that correct?

No.

Q Okay.

nd if we look at what changes in 2014, we could go down to the column starting at 508 that says "value of undeveloped land."

(Whereupon, the exhibit displayed on the screen was scrolled through.)

Q nd you could see that there is a listing that says the residential parcels are 83,000 pounds each. The number of homes

to build at 2,500, which generates a value of 207 million pounds, which is then converted into dollars; that's the basis for the 245 some-odd million dollar increase in value; is that correct?

I really don't know, but the job could be much bigger than that, too. It's 1200 acres, more than that, fronting the entire width -- fronting on the North Sea. It's, it's, it's like one of the easiest -- in the oil capital of Europe.

Q I'm asking, was it actually done?

It's a very nice piece of land that everybody said I could never get zoned, and I not only got it zoned, I got it zoned for much more than anyone thought possible.

Q Let's take a look, then, if we could compare this, because 2,500 homes is not the same used in the Statement of Financial Condition, which I think --

MR. W LL CE: Please split those screens.

(Whereupon, the exhibit was displayed on the screen.)

Q If we look, it says -- the valuation states there is 2,500 homes?

Yes.

Q But the statement itself says that it's 950 holiday homes, 500 single family residences, and 36 golf villas?

More luxurious, yes.

Q nd I'll represent to you that that comes to 1,486

homes in total, with only 500 single family residences. So the Statement of Financial Condition for 2014 does not accurately disclose the number used in the calculation; is that correct?

Those homes will sell for a tremendous amount of money; they are on the North Sea. I could also go with a much bigger job if I wanted to. The relationship is very good with berdeen. berdeen is a very rich place. It's an incredible piece of land. nd again, it may be the greatest golf course ever built. nd I own Turnberry and I own great ones.

The numbers there are not shocking numbers. nd this is a very big job. I just don't want to build it now. You know, you're probably right, I'm doing other things right now.

THE COURT: Mr. Wallace, I'm so what following your lead. If you want to let the witness ramble on, be unresponsive, repeat himself, go ahead.

MR. W LL CE: I might normally move to strike, but there are things I would like to preserve for the record in that answer, so I'm reluctantly allowing this to continue.

THE COURT: That's why I'm following your lead.

MR. KISE: I just want to note, I'm not really sure it's clear. Maybe this is the subject of the ambiguity. I mean, I think his answer is a brilliant answer. I just don't know if he is answering the question because he is confused as to whether or not we are talking about the Statement of Financial Condition or the backup data, which

he's testified -- I think Mr. Wallace has already admitted -- this witness has never seen, before, the backup data. So I'm not sure what he's answering, whether he is talking about the backup data or he is talking about the Statement of Financial Condition, or if the question is both.

MR. W LL CE: I don't think my question was answered, so I was going to re-ask it, but I'm happy to have --

MR. KISE: If you could clear it up, that's fine. I just think it's not even in the record.

MR. W LL CE: I am I'm just asking that his prior statement remain on the record, even though it's nonresponsive.

Q Mr. Trump, my question is more directed. It's simply that the number of homes used in the calculation for 2014 do not actually match the number of homes disclosed in the statement; is that correct?

I don't know, but it could very well be. It's sort of like a painting. You could do pretty much what you want to do. The land is there. You could do what you want to do. So you could do either one of them, actually.

Q s of 2012, you had actually made a determination that you would not be developing the berdeen property because of Scottish plans to build a wind farm off shore; is that correct?

Well, I was not happy because they are -- they've fought long and hard to build wind mills, I think nine of them, out in the ocean, out in the sea. nd they built them.

Q Okay. "They" being Scotland?

Scotland.

Q nd because of those wind mills, you decided in 2012 that you were not going to be doing further development of the berdeen property?

I told them, I don't know if it has an impact or not, I'm not a windmill person. I think I'm being proven to be right.

Q Did you testify about your unwillingness to develop the berdeen property for a subcommittee of the Scottish parliament in 2012?

Yes, I did.

Q nd do you believe that -- I'll see if I could skip ahead and just ask. Would it sound correct to you that Mr. Weisselberg submitted a statement to the UK regulators in September of 2014 saying that the Trump Organization did not intend to develop the berdeen property any further based on the wind farms?

We had a big fight over the wind farms, but they were put in years ago. They've been there for many years now. They'll probably come down, like all the other wind farms are coming down, and I've been asked whether or not they have an

impact -- they are miles out in the ocean. They are not on the property. They are miles out. nd most people tell me, no. lmost everybody tells me no. I don't know if that's true. But regardless, we have the right to build a very big project, if I want to build it. That was in 2014, when we were fighting the wind mills, yes.

Q nd as of today, November 6th, 2023. You haven't built any homes at berdeen; is that correct?

It's just a beautiful piece of property sitting there waiting for homes to be built. It will be very successful. I just don't -- you know, there's nothing wrong with sitting with property and waiting if you have the money to play that game, and I do have a lot of money, a lot more money than you thought, I guess. t some point that will be developed into a magnificent job. I just don't want to do it now.

Q Mr. Trump, apart from the Seven Springs valuation we discussed, and your apartment, do you stand by all the valuations in this Statement of Financial Condition for 2014?

I haven't looked at it in years.

Q Do you have any reason -- so, you might not agree with the valuations in here anymore, is what you are saying?

I think I've been proven to be right, because if you take those valuations and bring them up to 2021, a couple of years ago they are much higher than they were in that statement.

Q But the valuations were the estimated current value as

of June 30, 2014; is that correct?

Yeah, but if you carry that forward to 2021, all of those valuations were low.

Q Meaning the properties are now worth more today, November 2023, than they were --

Much more, yeah.

Q Than they were in June of 2014.

Okay. part from the Seven Springs valuation we discussed and the triplex apartment, are you aware of any other properties on the Statement of Financial Condition between 2011 and 2017 that were overstated?

Um, not that would have -- I don't know of any, but not that would have a material effect, because I'm worth billions of dollars more than the financial statements. The financial statements are just the opposite of what your ttorney General thought, and they are having a big problem with it. I'm worth billions of dollars more, so anything that would be a little bit off would be nonmaterial, nonmaterial.

Q nd are you aware of any nonmaterial items that were overstated in the Statement of Financial Condition between '11 and '17?

I haven't looked.

Q Do you still approve of the work that Mr. McConney and Mr. Weisselberg did preparing the Statements of Financial Condition between 2011 and 2017?

Well, again, we have a disclaimer clause that tells you we are doing the work. It's not in accordance with your normal -- if you are going to do some kind of a big certified statement. You are not doing appraisals and everything else. We have a very important clause called a "disclaimer clause", and it's a 100 percent disclaim. nd some people call it a "worthless statement clause." They call it lots of different things. nd as you will be hearing in testimony, they always hold up in court, except maybe in this court. They always hold up in court, always. It's a disclaimer.

It says, very strongly, do your own due diligence. Do your own work. Do your own study. Don't take anything from this statement for granted. You could look at the statement, but you must do your own analysis and due diligence.

Q Do you still approve of the work that Mr. McConney and Mr. Weisselberg did in preparing the Statements of Financial Condition between 2011 and 2017?

s far as I know I do. You haven't shown me anything that would change my mind.

Q Same thing true of the statements that came out between 2017 and 2021? You stand by that?

I was assured of 2021, but I was President, and I was not involved in any way by that. I was doing other things.

Q You were not aware of anything that was done that you disagree with, but you are not familiar with the statements?

Probably the statements would be -- again, if there was a mistake, it was nonmaterial, but even if it was material, and I don't see that, and we did make some changes where they found out there were mistakes, we have a disclaimer clause that says, do your own diligence -- due diligence. Don't, under any circumstances, count on anything here, because it was done -- they are done quickly. They are done -- it says -- I think it says done in accordance with the owner's projections and the owners, The Trump Organization's projections and everything else.

So one of the reasons I never got too involved with these statements was -- that clause is on page one, as you know better than anybody. It's also throughout the statement. When you read the statement, everything is disclaimed. They say go out and do your own. Don't believe it. Get your own appraisers, get your own accountants, do everything. nd that's why we shouldn't be having a case here, because we have a disclaimer clause which every court in this country holds up, except for this particular Judge.

Q Can I ask, then, is it your particular position that the Statements of Financial Condition are, in fact, worthless?

No, I don't think they are worthless, but I don't think they are worthless at all. nd -- but I think that they're -- I think, frankly, with the disclaimer clause, if there is any mistake, the disclaimer clause covers it. nd because they

haven't -- they didn't devote their entire life to this. nd again, most developers don't do this. They just write the name of the building and the address of the building. They put some number that they think it's worth. They don't have anything like this.

What I've done is far more -- and it's also far more conservative. You never mentioned the fact that we have 3, $400 million cash in these things. Very -- I mean, people don't know how good a company I built. You know why? Because people like you go around and try and demean me and try and hurt me.

Q Mr. Trump --

Probably for political reasons. In her case, definitely for political reasons. nd I think it's hurting her.

MR. W LL CE: There's a lot in there that I want to keep, your Honor, so I'm not going to move to strike that.

Q I just want to go back and clarify one thing in your last answer. You said "they did not devote their entire life to them." Who is the "they" you referred to?

That would be Jeff and llen. They had other things to do.

Q Does that mean that Jeff and llen were not being careful when they prepared your statement?

No, I think they were being careful. But, again, the disclaimer clause says if you -- if there's a mistake, if there's something, it says, "Don't rely" -- it's called a

non-reliance clause, also. I mean it's a very standard thing and it's allowed in every court in the United States. It's a non-reliance.

Q You stated that.

I know I'm trying to make you understand it. It's a non -- non-reliance clause, and every court in the United States has upheld them, and every legal scholar that I've read about this case has said what's going on here? How can a thing like this being going on? It's disgraceful. nd in addition to that, I'm worth more than the numbers in the statement.

MR. W LL CE: That answer I will move to strike, your Honor.

THE COURT: s repetitive?

MR. W LL CE: Repetitive, nonresponsive.

THE COURT: Nonresponsive.

MR. W LL CE: He's already made that point in the record.

MR. KISE: I'm not sure there's any basis to strike -- a valid basis to strike it. It's an answer. Mr. Wallace is satisfied with the answers. He is culling for these narratives, and he is getting answers to the questions. nd this is -- this is -- this goes to the very heart of what we're here about, which is intent. I mean, if -- intent is subjective. nd if this witness's intent is as stated here, I don't see how anyone could ever prove intent under these

circumstances. It's a brilliant answer to the question. So Mr. Wallace can't pick and choose which narratives he likes and which narratives he doesn't. We could come back here in two or three weeks and go through the same charade and ask the same question get it out, but as I said, it's far more effective to allow this witness to explain his position and explain to the court his view, what he intended, how he intended it, what was happening, and how he views the statements.

MR. W LL CE: The response is even longer than the statement I asked to strike, so at this point let's leave it in then.

THE COURT: Leave it in. There's no jury. It doesn't matter.

MR. W LL CE: We'll, leave it in.

Q Mr. Trump, I think you said this in the course of your answers. Let me just try to clarify this. You do not agree with the position of the Office of the ttorney General that the values in the Statement of Financial Condition are overstated; is that correct?

I think she's a political hack.

Q That's not the question.

nd I think she --

Q That's not the question.

-- used this case to try to become Governor, and she

successfully used it to become ttorney General. nd I think she's a political hack, and this a disgrace that a case like this is going on. nd all you have to do is read the legal scholars and the papers and you'll see exactly what I'm saying. nd a lot of them didn't even know how valuable the properties were. You never said Trump has three and $400 million cash, and now more than that. This is a political witch-hunt, and I think she should be ashamed of herself.

Q You do not agree with the position of the Office of the ttorney General that the values in the Statement of Financial Condition are overstated; is that correct?

The overall value is billions of dollars more than is in these statements. So that when a bank gets them, the bank is seeing a conservative statement, not a -- she tried to make you believe, even yesterday, she's out there saying, "Oh, fraud. Fraud. This is the opposite. Fraud."

The fraud is her where she says Mar-a-Lago -- she said it was worth $25 million. He said it's worth $18 million (indicating), $18 million. She said it's $25 million. She convinced him that it was worth $18 million. nd it's worth a billion dollars, or something like that.

Q Yes or no.

It's a disgrace.

Q Yes or no, do you agree with the position of the Office of the ttorney General that the values in the Statement of

Financial Condition are overstated?

MS. H BB : sked and answered.

MR. W LL CE: It has not.

THE COURT: No, it has not been asked and answered.

MS. H BB : He actually did the --

THE COURT: It's been asked. He hasn't answered.

MS. H BB : Your Honor, I'm not screaming. ll do respect, your Honor, I don't appreciate when people scream.

The overall value is billions more was the answer. That's his answer. You could read it in the record.

THE COURT: It's a yes or no question.

Q Just yes or no, Mr. Trump. Do you agree with the statement, the position of the Office of the ttorney General is the values are overstated?

The financial statements are very conservative. The overall number of value is much higher than the number in the financial statements. In addition to that, you have a hundred percent disclaimer clause that goes on for a page and a half.

THE COURT: No, no, no. We are not going to hear about the disclaimer clause. If you want to know --

It's very important.

THE COURT: -- about the disclaimer clause, read my opinion again, or for the first time, perhaps.

THE WITNESS: Well, you are wrong on the opinion.

Q Mr. Trump, let's go to that then. Mr. Trump, you do not agree with the determination of the Court in its summary judgment decision that the Statements of Financial Condition were misleading; is that correct?

He ruled against me without knowing anything about me. He ruled against me and he said I was a fraud before he knew anything about me, nothing about me.

nd then he said in his statement that Mar-a-Lago is worth $18 million and it's worth 50 times to 100 times more than that, and everybody knows it. nd everybody is watching this case. He called me a fraud and he didn't know anything about me.

Q You did not -- so I think the essence of your answer is there, but I would like to get it as a yes or no. You do not agree with the determination of this Court in its summary judgment decision that the Statements of Financial Condition were misleading; is that correct?

I think it's fraudulent, the decision. I think it's fraudulent. The fraud is on the Court, not on me. When you rule that Mar-a-Lago is worth $18 million, I could give you a quarter of a tennis court would be worth that.

When you rule that Mar-a-Lago is worth $18 million and then she rules it's worth $25 million, either people are very stupid or there's a fraud. The fraud is on behalf of the Court, because when the Court does that, and then they say I didn't

value my property correct? Think of it, $18 million, he said. nd then he -- he says that I'm a fraud because I didn't value my property correctly? He is the one that didn't value the property correctly.

Q Mr. Trump --

nd how do you do that? How do you rule against somebody and call them a fraud, as the President of the United States, who did a great job. ll you have to look at is the President today. What he is doing? How do you call a man a fraud when you have a property that's a 50 to 100 times more valuable. It's a terrible thing you did. You knew nothing about me. You believed this political hack back there, and that's unfortunate.

Q re you done?

Done.

Q Okay. I'll take you up on one of the invitations. You are talking about the $18 million valuation versus the higher valuation of Mar-a-Lago. Which one are you paying taxes on down in Florida?

Which one, what?

Q re you paying taxes on an $18 million valuation of Mar-a-Lago or $1.5 billion?

You know that assessments are totally different from the valuation of property. n assessment -- as an example in New York. You sell a building, a building was recently sold for

a billion dollars. It's assessed for a tiny fraction of that. Same thing in Florida. Same thing in other places. Other places have full assessments. Whatever you pay, that's what the assessment is, but that's not that way in Palm Beach, Florida. It's not that way in New York, and it's not that way in most cases.

Q If it was that way it would make a difference that the property has been appraised --

Sure.

Q -- at $18 million in Florida?

That would be a much different thing.

Q Mr. Trump, I would like to go back to the Statement of Financial Condition quickly. If you could put Exhibit 730 back up?

(Whereupon, the exhibit was displayed on the screen.)

Q If you could go to page two, this is a paragraph we've looked at before. It's the second paragraph which states, "Donald J. Trump is responsible for the preparation and fair presentation of the financial statements."

I would like to focus on the second half of the sentence which says, "Donald J. Trump is responsible for designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the financial statement."

I will ask an open-ended question here. What did you do to meet your responsibility for designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the financial statement?

I gave two people total authority to work with a very expensive accounting firm, very high-priced accounting firm who charged me a lot of money for this, a lot of money. nd they worked with the accounting firm and they came up with a statement.

I could've done this statement like many other developers, where I just write down the building and put a value. I didn't choose to do it that way. nd I told them to work with the accounting firm and give them what they need. nd that's what they did.

Q nd so the two people, you are referring to, once again, that's Mr. McConney and Mr. Weisselberg; correct?

Correct.

Q nd so you directed them to prepare the statements in accordance with G P; is that correct?

I don't know what it was. I said, "Prepare the statements so that the accounting firm is happy." So they gave us a statement.

Q The question is what steps you took to --

I told you.

Q To design, implement, maintain internal control

relevant to the fair presentation of the financial statement.

I just told you.

Q Okay.

nything else you did to -- in connection with this obligation?

No, but if you looked at the paragraphs, and I don't know if, your Honor, if I could do this, but I have it in my pocket (indicating). If you look at the paragraphs that follow that -- this is a total exculpation -- and if you would like to have it, I would read it, if you would like, or I don't know what the procedure is, but I have -- I've taken this right out of this, and it's very simple. nd it says exactly how important that clause is. nd it's been written about by legal scholars.

(Continued on the next page.)

Q Between Mazars and the Trump Organization, who is responsible for the fair presentation of the Statements of Financial Condition?

I think they work together.

Q Who was responsible?

They got paid a lot of money too.

Q Who was responsible for making sure the statements were compliant with G P?

I don't know. I assume -- I don't know, were they supposed to be compliant to G P, because I am not sure that that's true, you know, because G P is defined a certain way. I am not sure that's true. But certainly the accounting firm which got paid millions of dollars do this work, they had to do something.

Q Mr. Trump --

They got paid a lot of money to do this work.

Q -- do you have an understanding of what responsibilities, if any, the Trump Organization had in connection with the preparation of the 2014 Statement of Financial Condition?

Well, I think I have answered this question about five times.

Q What is the answer?

I told two top people to work with the accounting firm, give them whatever they needed, anything they needed give

them so they can come up with a statement. nd if the accounting firm was unhappy, they would go back and they would say, we need this, we need that. nd they were very insistent on that. Very insistent on that. But they came up with statements in each of those years, so obviously they were satisfied with that.

MR. W LL CE: Could we put up a copy of Plaintiff's Exhibit 717? I think it is already in evidence.

Q Mr. Trump, I have been handed a document that has been marked as Plaintiff's Exhibit 717. This is the engagement letter for the preparation of your June 30, 2014 Statement of Financial Condition.

I will just direct your attention to the third page of this document, which has a heading: Management Responsibilities, and lists through F, a series of responsibilities. Do you have an understanding that the responsibilities listed here were for the Trump Organization to undertake in the preparation of the Statement of Financial Conditions?

I don't remember this, but it looks like that, yes.

Q So to your understanding, the Trump Organization was responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of merica other than

previously noted; is that correct?

Yes, but together working with the accounting firm, the very highly paid accounting firm.

Q The next item states that management is responsible for designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements. That was a Trump Organization responsibility, correct?

Sure.

Q Item C: Presenting and detecting fraud. That was a Trump Organization responsibility --

Sure.

Q -- is that correct?

I would imagine they all had to work on it. This was the accounting firm for the company, and I would imagine they all worked on that. You know you do audits and you do all of the things that you would normally do, and hopefully if something is wrong, you catch it.

Q Who within the Trump Organization was responsible for preventing and detecting fraud?

Everybody.

Q Item D. Who within the Trump Organization was responsible for identifying and ensuring that the company complies with the laws and regulations applicable to its activities?

I would say, you know, sort of anybody who sees anything wrong, they should report it. nybody.

Q Is there a formal system for reporting anything wrong, as you described it, within the Trump Organization?

Not formal, but I say to anybody, anybody sees anything going on that is not appropriate, come see me directly, I don't care who you are.

Q Has anyone ever come to see you directly about these?

Yeah people, people tell me things, yeah.

Q What instances do you recall?

Things going on and I get the problem solved when I hear it.

Q But I am asking if you remember any specific instances of someone bringing improper activity to your attention.

Over the years?

Q Yeah.

Yeah, sure. partments that are rented that they say are vacant. Somebody is getting money. Other things, yeah, we hear. I hear things. It sounds like a big deal, but it goes on. partments empty, they put it down as empty but somebody is getting money for it. nd you know, generally it is the person who runs the building or the management person, over the years that kind of thing happens. nd I take care of the situation when it happens. But I want everybody to look -- I

tell everybody if you see anything, come to see management or come to see me directly. I don't want that going on.

Q nd that would have been the case up until you became President in 2017?

That is correct.

Q That no longer happens from 2017 to present; is that correct?

Well, present is different than it was, you know, prior to when I was President. Right now, unless you know something I don't know, I am not President.

Q No, I am just asking if people still come to you with problems that they identify.

Yeah. Yeah.

Q What do you remember?

I don't think they come -- I am not sure that they come. I haven't remembered a thing, like, right now. So we are a little new to the game because I haven't been doing this. I am back a little bit in the real estate business. Right?

Q If you look at item E on this chart it says: Selection and pplication of ccounting Principles.

Do you know who within the Trump Organization was responsible for the selection and application of accounting principles?

No. I would assume that the accounting firm would recommend something and we would accept it.

Q I am just pointing out that this is under the heading management responsibilities.

Right. But I would assume --

Q Can I finish my question?

Yeah.

Q Do you know if anyone at the Trump Organization was responsible for this on the Trump Organization side?

gain, I would assume that Mazars would come and recommend something and we would accept that procedure.

Q Item F is: Making all financial records and related information available to us and for the accuracy and completeness of that information.

Who within the Trump Organization was responsible for meeting that responsibility?

That would be the staff in the back. That would be Jeff, llen and the staff.

THE WITNESS: I would love to read this, Your Honor, if I could. m I allowed to do that?

THE COURT: No, not at this point.

THE WITNESS: I am shocked. I am shocked.

MR. W LL CE: Okay. We can take that down.

Q Mr. Trump, I would like to talk a little bit about your building at 40 Wall Street.

Yeah.

Q Have you ever inflated the operating income of 40

Wall Street in order to increase a reported valuation?

Not that I know.

Q Can we take a quick look at Plaintiff's Exhibit 719.

MR. W LL CE: Sorry, we need the native version. I apologize.

nd if we could go to row 118.

Q This is the entry for 40 Wall Street. nd if we scroll down to rows 137 or so, there is a valuation for 2014 and it states: NOI stabilized based on cash flow prepared July 2014 including pending leases. Green Ivy and vacant space. nd it lists an NOI of $23,873,545.

Do you know if that is an accurate reflection of the NOI?

I don't. It is a long time ago. But I don't.

Q Mr. Trump, I am handing up a document that has not been premarked. It is a copy of an article from Forbes magazine dated September 21, 2022. (sic.)

Now, I would just like to direct your attention to the bottom of page 11 in this article.

There is a headline that states: couple months after securing the loan, Donald Trump was feeling good, sitting at his desk in Trump Tower, speaking openly to Forbes about his years' long quest to vault himself higher on the list of merica's richest people. n audio recording of that conversation, which took place on September 21, 2015, makes it

clear that Trump was not only involved in the effort to misinform the world about the value of his assets, he was willing to take the ruse further than anyone else, and even admit his motivation for doing so: It was good for financing he said.

I'll stop you there. Do you recall speaking to Forbes on September 21, 2015?

No. nd who would say that? I am not saying that. Forbes, they are owned by China. Now they just sold it to Russia I read yesterday.

Q Did you tell Forbes ever that a high net worth is good for financing?

I mean, it is something that I would say. high net worth is good for some types of financing, not for buildings and not for specific deals necessarily. But I guess having a high net worth it makes -- it would be good. Do you want me to say, oh, let's have a low net worth? Give me a low net worth and let's get financing. No. Having a solid record -- having a good net worth is a positive thing. I can't say it is not.

Q If we look down at the next paragraph. It states: "Even though he had just reworked his mortgage at 40 Wall Street, Trump couldn't resist another chance to boast about it. Its a 78-story building, Trump said. Even though his firm had previously marketed it as a 72-story building. nd it's actually just 63 stories according to documents filed with the

City. It is going to throw off, would you say, 50 million maybe this year? He asked, turning to llen Weisselberg. Fifty million at least, Trump concluded faster than his CFO could get out of the words, "Yeah, by the end of the year."

We can stop there. Do you know whether or not it was true that 40 Wall Street in September of 2015 would throw off $50 million by the end of that year?

I don't know. But I have very little respect for Forbes, so, what I say to them, you know, I deal with them very quickly. nd I don't even deal with them. I haven't dealt with them in years.

Q So do you believe you were misquoted?

I think they are out of business. ren't they?

Q Do you believe you were misquoted in this statement?

I don't know. I don't know what I said. You are giving me this information. If you have the statement, let me see it.

Q I am going to move ahead.

I don't think too much about what I say to Forbes.

Q We'll move ahead to page 13. The lower paragraph, we will start there.

It says: Forbes reporter noted that the building was 1.2 million square feet rounding up from its actual square footage of 1,165,207. It is actually 1.3, Trump said. By the way, it is 1.3 to be honest with you.

The same reporter then said Forbes was estimating its net operating income at 24 million, the inflated figure that Jeff, apparently McConney, had shared the previous year. Where did you get that from? We are going to make 64 million net, net after debt service this year, at least, Trump declared.

Do you recall telling Forbes that 40 Wall Street was going to make $64 million in 2015 net, net after debt service?

No, I don't. When was this?

Q 2015.

It is a long time ago. I don't know.

Q I believe Forbes published an audio clip with the article of this interview. I am just going to ask if we can just play that now.

(The audio clip was played in open court.)

MR. KISE: Your Honor, can anyone actually hear that? It seemed relatively undecipherable.

THE COURT: I could not make out what was being said.

MR. W LL CE: Let me skip using the audio. I don't know if we can get it any higher.

Can we?

Q I'll just ask then generally, I know it was hard to decipher, what was on that recording, does it refresh your recollection that you may have spoken to Forbes in 2015?

No.

Q No.

Do you believe it would have been accurate to say that 40 Wall Street was going to make $64 million in 2015 net after debt service?

I don't know. You are putting me back a long time ago, long past statute of limitations.

Q ll right. Let's --

I don't know.

Q We are going to hand you a copy of a document that is already in evidence. It is Plaintiff's Exhibit 652. It is very small print so it is going to be easier to see it up on the screen.

If we could go to page two of this document. nd if we could zoom in on the far right column.

It states: 40 Wall Street income and expense statement. Cash basis. Twelve-month period ended March 31, 2015.

If you look down at the bottom of the pullout here it says: Total receipts for the building are $29,906,711.

Do you know if that was an accurate reflection of the total receipts for the 12-month period of 40 Wall Street as of March 31, 2015?

I don't know. I have never seen that before.

MR. W LL CE: If we scroll down to the bottom of

this column. ctually go to the bottom of the last page, please.

Q If we look under the 2015, March 31. Underneath Debt Service In and Capital Disbursements. It states: The excess cash flow or deficit for 40 Wall Street was negative $8,736,924. Do you know if 40 Wall Street in fact ran a deficit of more than $8.7 million for the 12-month period ended March 31, 2015?

Well, we spent millions of dollars based on that. We spent millions of dollars on building improvements. We were fixing the building. I spent a lot of money inside the building, my own cash, to improve the building. We rebuilt the lobbies. We rebuilt the elevators. We spent a lot of money, and actually even more than that, I think. But the building has been a successful building.

Q The building improvements number we can see there under capital disbursements is listed as $8.2 million; is that what you are referring to?

Yea, but we were doing a lot of work. We were doing the elevators and lobbies, doing a lot of work, and the building needed a lot of work.

Q I take it you don't know whether or not it is accurate that in March 31, 2015 40 Wall Street had run a deficit of $8.7 million?

fter spending millions of dollars on fixing the

building, yeah, it is possible. But then you make it up in later years. You lease to good tenants and they pay you a lot of rent because they like what you have done.

MR. W LL CE: Your Honor, I am going to pass the witness a copy of the document, it is already in evidence as Plaintiff's Exhibit 636.

Q Mr. Trump, this is an e-mail from Donna Kidder to Jack Weisselberg and llen Weisselberg with an attachment entitled 40 Wall 2012 to 2014 cash flows.

It will be easier to see it up on the screen. gain, it has very small print.

MR. W LL CE: Can we go to page three of five?

Q t the top it says 40 Wall Street LLC cash flow, year ending December 31, 2014.

nd at the bottom of this section it states: Cash flow (after debt service, Capex and IT) negative $9,904,289.

Do you know if 40 Wall Street, in fact, ran a deficit of more than $9.9 million for the year ending December 31, 2014?

That's a very small number. nd it doesn't include all of the money that was spent in fixing the building, bringing it back to good health. It also doesn't show vacancies and things that are leased up. The building is now actually, I think it is pretty close to being fully leased. But it doesn't show vacancy and it doesn't show all of the

money spent on construction.

Q m I understanding then -- I am sorry to interrupt you. m I understanding that this number could be correct but you think there are other expenses that aren't included in here?

We spent a lot of money in fixing the building up, and the building is a very good building.

But this has nothing to -- I mean, you can show this de minimus stuff or non-material stuff. This has nothing to do with values. The value of 40 Wall Street is, you know, hundreds of millions of dollars more than what she says it is. She doesn't know what 40 Wall Street -- she doesn't even know where 40 Wall Street is. nd the value is hundreds of millions.

If I was going to sell that building, because this was a lawsuit that started off with value, now let's get into a rent-roll of one building, big deal. This is all non-material stuff. If we are fixing up a building and spending money on new elevators and new escalators and new all of the things we have in the building, it is going to do very well in the future. You have to do this stuff.

Q Mr. Trump, are you familiar with what technique Mr. Weisselberg and Mr. McConney used to value 40 Wall Street for the 2014 Statement of Financial Condition?

No. But the value of the building I am familiar

with, because I would say that building -- I could look at buildings and tell you what they are worth.

Q I would like to move on to page four of this document. Which lists 40 Wall Street LLC cash flow year end of December 13, 2013. We go to the bottom of this year's entry, we see cash flow (after debt service Capex and IT) negative 7 thousand 317,370.

7 million.

THE COURT: I think you misspoke.

Q 7 million. I'll restate what it says.

Which is, negative $7,317,370. Mr. Trump, do you know if 40 Wall Street in fact ran a deficit of more than $7.3 million for the year ending December 31, are 2013?

I don't know, but it doesn't effect the value of the building. The building is the building. If a developer comes along they are going to know that you have to spend money to make money with a building. nd they are going to know, they will either fix it or see that we are doing it. It doesn't affect the value of a building. You are talking about small money. It is not material.

nd this was a lawsuit based on values. nd then when they looked at my statement and when they looked at the cash they said, oh, we are going to have to go a different way, how about disgorgement. Let's take all of his properties away like they do in communist China. Let's take all of his

properties away because, you know.

Except you have one problem, I have very little debt, and I have a lot of cash. nd I have assets that are much better than you thought. So that was a little bit of a problem. But in this city today, and in this country today, maybe a certain Judge would do that.

Q Mr. Trump, I promise we will get through this particular document much more quickly if you can stop at, "I don't know." nd you are repeating statements you have made before --

I don't know.

Q -- so I am familiar with your position.

If we could go to page five of this document, please. It is the 40 Wall Street LLC cash flow year ending December 31, 2012. If we go to the bottom, it lists (cash flow after debt service Capex and IT) negative $20,990,873.

Do you know if 40 Wall Street, in fact, ran a deficit of more than $20.9 million for the year ending December 31, 2012?

It could have been for one year it did. It could very well have been. But it makes a lot of money. nd it makes a lot of money now. It depends. You have extraordinary expenses during certain periods of time with a building. You have to redo things. But I can just tell you, it makes -- 40 Wall Street obviously makes a lot of money.

nd by the way, the money we borrowed is all current or paid off. You know, we never -- no bank lost money. With all of this stuff, not one bank lost money. Not one insurance company lost money.

nd by the way, the insurance company that you say lost, they are still my insurance company. It is one of the biggest, most prestigious companies in the world. They don't even know what you are talking about.

Q Mr. Trump, do you recall making misrepresentations about the appraised value of 40 Wall Street?

No.

Q Mr. Trump, you are being handed a document that has been marked as Plaintiff's Exhibit 3341. t the top of this is an e-mail chain between Donald Trump Jr., manda Miller, Rhona Graff and Jeffrey Lichtenberg.

If we could go down to the bottom e-mail in this thread actually, and we will put it up on the screen so it is easier to follow.

There is an e-mail from someone named Kusisto from the Wall Street Journal to a series of e-mail addresses including DTrump@Trumporg.com; Rhona Graff; DJTJrTrumporg.com; manda Miller and Selma Langer. Before we get into the substance of the document, I want to first ask, do you know if the e-mail address DTrump@Trumporg.com was ever an actual e-mail address in use?

I don't know, no.

Q Did you ever use an e-mail address of DTrump@trumporg.com?

Might be, but not that I know of.

Q Go to the top. It states: "Thank you both again for chatting with me about 40 Wall Street. We are planning on running the story tomorrow, so I wanted to make sure I sent over a few facts."

Do you recall whether or not you and Donald Trump Jr. spoke to the Wall Street Journal in or around January of 2012?

No, I don't.

Q If you look down under the headline Value, item three says: "The building is one of the Trump Organizations most significant commercial holdings in Manhattan. It is now valued at $600 million according to a recent appraisal."

Do you know who made the representation to the Wall Street Journal that the 40 Wall Street had been valued at $600 million according to a recent appraisal?

The year is what year?

Q 2012.

2012?

Q Yes.

No. I mean, it is probably around that number. It is not that far off. I don't know. I don't know. I don't know if anybody had an appraisal. But I know that number is

not a very far off number. If anything, it could be worth more.

Q I am asking about the existence of an appraisal. Do you know if there was, in fact, an appraisal at the Trump Organization valuing the 40 Wall Street at $600 million as of January 2012?

So you are saying 12 years ago do I know whether or not there is an appraisal sitting around someplace for the building.

Q I am asking if you are aware, yes.

I am not aware.

Q I will represent to you that we have not received an appraisal from the Trump Organization discovery valuing the building at $600 million as of June 2012.

Mr. Trump, are you the one --

MR. KISE: Is Mr. Wallace testifying now?

MR. W LL CE: I said I am representing to him what we got in discovery.

THE COURT: Is that part of a question though? I think you can't just sort of represent.

MR. W LL CE: That's fine.

Q Mr. Trump, were you the person who told the reporter at the -- I'll strike that question and start over.

Mr. Trump --

THE COURT: It is withdrawn.

MR. W LL CE: Withdrawn. I apologize, Your Honor.

Q re you the one who told the reporter at the Wall Street Journal that there is a $600 million recent appraisal for 40 Wall Street?

MR. KISE: Objection, asked and answered.

I don't know of any such appraisal.

THE COURT: Overruled.

We are talking 12 years ago, I don't know.

Q If we look at the top of this e-mail chain, there is an e-mail from Donald Trump Jr. It says: Okay great, there shouldn't be much additional. I don't know where she got the 35 number in renovations, but DJT told her the 600, so he will be happy if that gets printed.

re you the DJT that is being referenced here?

Yes.

Q Does this refresh your recollection about whether or not you told a reporter that there had been a $600 million appraisal of 40 Wall Street in January 2012?

No. But I think the building would be worth about that. I don't think $600 million for that very, very large building is a lot of money.

THE COURT: Five minute warning.

MR. W LL CE: Your Honor, I ask that Plaintiff's Exhibit 3341 be entered into evidence.

THE COURT: Granted.

MR. KISE: Objection statute of limitations and relevance. I am not sure what the relevance is of a news article. It doesn't have anything to do with the SOFCs.

THE COURT: Overruled, on both grounds.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 3341 by the Court.)

Q So Mr. Trump, why did you have the Statement of Financial Condition prepared?

When?

Q Let's say in the period -- the period of 2011 to 2017, why was a Statement of Financial Condition being prepared by the Trump Organization?

I think we -- I don't know, I think in one form or another, maybe not officially, we had Statements of Financial Condition. Maybe before that, I don't know. I can't answer that question, we are doing a Statement of Financial Condition.

Q You said you were spending a lot of money to have these made, why were you spending that money?

I think it is a positive thing to have. Even for myself, I think it is a positive thing to have.

Q Did you use them to obtain financing?

Because of the disclaimer clause, they were almost valueless.

Q That's not my question. My question is whether you would actually use them to obtain financing.

I would give them, but I don't think anybody paid much attention to them because of the disclaimer clause, and because generally that's not the way to do it.

gain, I have been doing it for 50 years and they look at the property.

MR. W LL CE: I am going to hand up to the witnesses a document marked as Plaintiff's Exhibit 1433. It is short so you can look at it on the screen.

Q This is a letter dated November 15, 2011. If you look down at the bottom; is that your signature, Mr. Trump?

Yeah, it is.

Q Okay. nd who is Mr. Richard Byrne?

He is an executive at Deutsche Bank.

Q Do you know if he is in the commercial real estate group at Deutsche Bank?

I don't know if he is now. I think he was then.

Q Fair enough. I am asking as of this letter. s of November of 2011, was Mr. Byrne in the commercial real estate group of Deutsche Bank.

Yeah, it is 12 years ago. This is so crazy.

Q So you sent the --

This is a letter I sent, yes.

Q nd you were interested in whether or not they might

finance the Doral transaction; is that right?

Right.

Q You did not finance the transaction through the commercial real estate group at Deutsche Bank, did you?

I did it through some other group, yes.

Q Would that have been the private wealth management group at Deutsche Bank?

Yes, very different people.

MR. W LL CE: Your Honor, I move 1433 into evidence.

MR. KISE: Statute of limitations.

THE COURT: Granted. It is in.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1433 by the Court.)

THE COURT: Two minute warning.

MR. W LL CE: We can stop here then.

THE COURT: Okay. Okay everybody, we will take a break until 2:15. Have a good lunch.

nd I will order the witness not to discuss this case or his testimony with anybody during the break.

(Whereupon, a luncheon recess was taken at this time.)

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

* * * * * * * *

F T E R N O O N S E S S I O N

* * * * * * *

THE COURT OFFICER: ll rise. Part 37 is back in session. The Honorable Judge rthur Engoron presiding. Be seated and come to order.

THE COURT: Let's have the witness take the stand.

(Whereupon, the witness stepped into the witness stand.)

THE COURT: Mr. Wallace, please resume.

MR. W LL CE: Thank you, your Honor.

Q When we broke for lunch, Mr. Trump, we were talking about the loans you took out from Deutsche Bank through the Private Wealth Management Group. Do you recall who you worked with at Deutsche Bank in the Private Wealth Management Group?

Yes.

Q Who was that?

Rosemary Vrablic.

Q Do you recall that loans through the Private Wealth Management Group required you to pride a guaranty on the loan is that; correct?

I believe so, yes.

MR. W LL CE: If we could get Document 426.

(Whereupon, the exhibit was displayed on the screen.)

THE COURT: re we having a technical --

MR. KISE: Is the witness's microphone on? I wasn't sure.

THE WITNESS: Yes.

THE COURT: His is on.

MR. KISE: Okay.

THE COURT: Yours are on.

MR. KISE: Yes.

(n exhibit was handed to the witness.)

Q Mr. Trump, the court officer is handing you a document that has been marked Plaintiff's Exhibit 426. It's very extensive, so I'll just walk through it on the screen.

(Whereupon, the exhibit was displayed on the screen.)

Q The cover of the document is an e-mail dated January 12th, 2017, between two Deutsche Bank employees. I'm going to ask you about the attachments. However, if we could go to page two of Document 426?

(Whereupon, the exhibit was displayed on the screen.)

Q This is the term loan agreement dated as of June 11, 2012, by and between Trump Endeavor 12, LLC and Deutsche Bank.

This is the loan agreement that relates to Doral; is that correct?

Yes.

MR. W LL CE: If we could go to page 80.

(Whereupon, the exhibit was displayed on the screen.)

Q Is that your signature, Mr. Trump?

Yes.

MR. W LL CE: Your Honor, I would move Plaintiff's Exhibit 426 into evidence.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled. Granted. It's in.

(Plaintiff's Exhibit 426 was deemed marked and admitted in evidence.)

MR. W LL CE: If we go to the next attachment on page 105, please.

(Whereupon, the exhibit was displayed on the screen.)

Q This is the guaranty that is associated with the Doral loan. Do you recall signing a guaranty?

I believe so, yes.

Q Let's take a look at page 124.

(Whereupon, the exhibit was displayed on the screen.)

Q Is that your signature, Mr. Trump?

Yes.

MR. W LL CE: If we could flip back to page 113, please.

(Whereupon, the exhibit was displayed on the screen.)

Q This is -- I'm going to direct your attention to item nine on this page. It says "Certain Representations. In order to induce lender to accept this guaranty and to enter into the credit agreement and the transactions thereunder, guarantor hereby makes the following representations and warranties as of the date hereof" -- I'll -- you see that section?

Yes, yeah.

MR. W LL CE: If we could flip down one page to page 114.

(Whereupon, the exhibit was displayed on the screen.)

Q Item little Roman (viii) under this says "Financial Statements." It states "The guarantor has furnished to lender his prior financial statements. Such prior financial statements are true and correct in all material respects." nd little (i), "Guarantor's Statement of Financial Condition fairly presents guarantor's financial condition as of June 30, 2011."

Do you believe that representation was true and accurate?

Yeah, I do.

MR. W LL CE: If we could flip ahead to page 116, please.

(Whereupon, the exhibit was displayed on the

screen.)

Q This is item ten. It states "Certain Financial Covenants. During the term hereunder, guarantor shall comply with the following decisional covenants:"

If we look down at number one, it talks about "unencumbered liquid assets." It states that "The guarantor shall maintain unencumbered liquid assets of not less than $50 million, with not less than $20 million of such unencumbered liquid assets to be held in accounts with lenders or lender's affiliates."

Were you aware that this loan required you to maintain unencumbered liquid assets of $50 million?

Yeah, cash.

Q nd if we look down lower in the sentence --

(Whereupon, the exhibit displayed on the screen was scrolled through.)

MR. W LL CE: Stay on that section, sorry.

ctually, it was not less than 20, but it didn't make any difference.

Q I believe it was 50 million --

Correct.

Q -- in liquid assets, 20 million were to be on deposit with Deutsche Bank?

That's correct, yes.

Q The last sentence in this paragraph states, "For

purposes hereof" -- no -- oh, at the end of the sentence we were just looking at it says that "The unencumbered liquid assets will be tested by lender semiannually during the renovation period" -- no I'm just totally on the wrong section.

MR. W LL CE: I'll withdraw that question if that's okay, your Honor.

THE COURT: That's the right word.

MR. W LL CE: Thank you.

Q Were you aware that the covenant was to be tested and certified each year based on your Statement of Financial Condition?

Based on my cash.

Q Okay.

s represented in your Statement of Financial Condition?

They want to have cash. They wanted -- weren't interested in anything but cash.

Q Do you believe you complied with this covenant?

Yeah, I had a lot of cash.

Q If we could go down to item three. It states, "Minimum Net Worth. t all times during the term hereunder, guarantor shall maintain at all times a net worth of not less than $2,500,000,000. This net worth covenant shall be tested and certified to on an annual basis, based upon the Statement of Financial Condition delivered to lender each year hereunder

pursuant to another section."

Were you aware that this loan required you to maintain a net worth of not less than $2.5 billion?

Yes.

Q nd were you aware that this covenant was to be tested and certified each year based upon your Statement of Financial Condition?

Yeah. They would look at -- they would actually come in and check, not so much even the financial condition. They would check the cash and what kind of cash is available. nd I guess at that point I had -- I think I had between three and $400 million in cash, which is more than I needed for the whole job.

Q nd --

That was what they were concerned with. They always wanted to make -- not because of me, because of other people. They always wanted to make sure the cash was substantial, because in this deal I agreed to put up the money necessary above what they were putting up, the cash necessary to complete the job. nd I did that very easily.

Q When you said, "I guess at that point I had, I think, between three and $400 million", are you speaking of the time of the origination of this loan in 2005?

I don't know. Just around that period, over the period of a year or two I had -- it goes up and down depending on

whether or not you are doing a development, or whether or not you maybe want to pay off debt, or whatever, but I had -- I've had a lot of cash for a long time.

Q If we go to the next item on this page, it's item 11?

(Whereupon, the exhibit was displayed on the screen.)

Q It's headed Financial Reporting and Certain Other dditional Covenants. It says that "The guarantor shall comply with the following additional covenants: Number one, financial reporting", and it lists documents that's the guarantor shall deliver to the lender or permit lender to review, and item is, " nnual Statement of Financial Condition, as soon as reasonably available. nd in any event, within 120 days following each June 30th, guarantor's Statement of Financial Condition as of June 30th, 20" -- I'll stop there.

Were you aware that this loan required you to submit your Statement of Financial Condition on an annual basis?

Yes, or a guaranty of cash.

Q That's not in this term, is it?

Maybe not, but that's all they cared about.

Q Do you believe that you complied with this covenant?

Yes, I did.

MR. W LL CE: Let me get 312.

Q Mr. Trump, we are handing up another lengthy document, but I'll show it to you on the screen again.

(n exhibit was handed to the witness.)

Q I mostly want to verify your signature. This is a document that has been marked as Plaintiff's Exhibit 312?

(Whereupon, the exhibit was displayed on the screen.)

Q Mr. Trump, this is the hotel term loan agreement with Deutsche Bank for 401 North Wabash Venture LLC. Do you see that?

Yes, I do.

Q Is this the loan that relates to the Trump Chicago Hotel?

Yes.

MR. W LL CE: If we could take a look at page 86 of this document.

(Whereupon, the exhibit was displayed on the screen.)

Q Mr. Trump, is that your signature?

Yes.

MR. W LL CE: Your Honor, we would ask this document be entered into evidence.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled. It's in evidence.

(Plaintiff's Exhibit 312 was deemed marked and admitted in evidence.)

MR. W LL CE: I'll ask defendants, are you okay

with me doing this on the screen? Do you want me to handout the --

MR. KISE: Sure.

MR. W LL CE: ll right.

MR. KISE: You know I'm old school like that.

(n exhibit was handed to the witness.)

Q Mr. Trump, you've been handed a document that has been marked Plaintiff's Exhibit 310.

(Whereupon, the exhibit was displayed on the screen.)

Q This is the term loan agreement "Residential" with Deutsche Bank for the 401 North Wabash Venture LLC. Is this the loan that relates to the Trump Chicago residential development?

I believe so, yes.

MR. W LL CE: nd if we could look at page 85.

Q Is this your signature, Mr. Trump?

Yes, it is.

MR. W LL CE: Your Honor, we would move Plaintiff's Exhibit 310 into evidence.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled. That's in evidence.

(Plaintiff's Exhibit 310 was deemed marked and admitted in evidence.)

Q Mr. Trump, you are being handed a document that has been marked as Plaintiff's Exhibit 367.

(n exhibit was handed to the witness.)

(Whereupon, the exhibit was displayed on the screen.)

Q The cover of this document is an e-mail dated November 8th, 2012, from Jeffrey Fried at Loeb & Loeb, to a number of people at the Trump Organization, including Jason Greenblatt. I would like to ask you about the two attachments.

Okay.

Q If you look at page two.

(Whereupon, the exhibit was displayed on the screen.)

Q This says it's the guaranty for the residential, dated November 9, 2012. Do you see that?

Yes.

(Whereupon, the exhibit was displayed on the screen.)

Q If you look at page 22, is that your signature Mr. Trump?

Yes.

MR. W LL CE: If we could turn to page 49 -- actually, 26. Let's go 26 first.

(Whereupon, the exhibit was displayed on the screen.)

Q This is the guaranty for the hotel section. nd if we look at page 49.

(Whereupon, the exhibit was displayed on the screen.)

Q Is that your signature, Mr. Trump?

Yes.

MR. W LL CE: Your Honor, we would move Plaintiff's Exhibit 367 into evidence.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled. It's in.

(Plaintiff's Exhibit 367 was deemed marked and admitted in evidence.)

Q Mr. Trump --

MR. W LL CE: If we could flip back to page ten here, please.

(Whereupon, the exhibit was displayed on the screen.)

Q Item nine on this page states certain representations. It says "In order to induce lender to accept this guaranty and to enter into the credit agreement and the transactions thereunder, guarantor hereby makes the following representations and warranties as of the date hereof."

MR. W LL CE: I would like to go down to item eight, Roman numeral (viii). If you could flip over.

(Whereupon, the exhibit was displayed on the screen.)

Q gain, it says "Financial statements" and it states

that "The guarantor has furnished to lender his prior financial statements. Such prior financial statements are true and correct in all material respects." nd little (i), "Guarantor's Statement of Financial Condition presents fairly guarantor's financial condition as of June 30, 2012." Do you believe this representation was true and accurate?

Yes.

MR. W LL CE: If we could flip ahead to page 13.

(Whereupon, the exhibit was displayed on the screen.)

Q Here it states, number ten, certain financial covenants. "During the term hereunder, guarantor shall comply with the following additional covenants. Unencumbered liquid assets at all times during the term hereunder, guarantor shall maintain unencumbered liquid assets of not less than $50 million, of not less than $20 million of such unencumbered liquid assets to be held in accounts with lender or lender's affiliates."

Is this the same liquidity requirement we saw earlier?

Similar, yes.

Q nd were you aware this loan required you to maintain an unencumbered liquidity of $50 million?

Yes.

MR. KISE: Objection.

THE COURT: Grounds?

MR. KISE: Just, I think that there is some, because of the way the question is being asked, potential to mischaracterize the evidence, because the question is, this loan required you to maintain, but -- and that's what I've been looking for. That's why I wanted the hard copy, but I haven't looked at it.

But as we heard testimony already in the record, there's a stepdown percentage here, and at some point the guaranty goes away. So I just want to make clear that when he says "the loan required you to maintain it", I think that may mischaracterize the actual evidence. The loan requires it only to a certain point.

MR. W LL CE: This is instruction to the witness. It's an improper objection.

MR. KISE: It's not an instruction to the witness.

MR. W LL CE: I'm not disputing the loan. The agreements say what they want. If they want to ask them about other aspects of this. So I'll say at the time you signed this, were you aware of this requirement in the guaranty.

Yes.

Q nd you are aware that this covenant was to be tested and certified each year based on your Statement of Financial Condition; is that correct?

I think so. gain, they were focused really only on

the cash.

Q nd do you believe that you complied with this covenant?

Yes, I do.

MR. W LL CE: If we could flip ahead to page 14.

(Whereupon, the exhibit was displayed on the screen.)

Q Item three, "Minimum Net Worth. t all times during the term hereunder, guarantor shall maintain, at all times, a net worth of not less than $2,500,000,000. This net worth covenant shall be tested and certified on an annual basis as of each June 30th within 120 days following each June 30th, based upon the Statement of Financial Condition delivered to lender."

Were you aware that this loan required you to maintain a net worth of not less than $2.5 billion?

Yes.

MR. KISE: Objection. Same objection.

THE COURT: Overruled.

Q Were you aware this covenant was to be tested and certified each year based upon your Statement of Financial Condition?

MR. KISE: Objection. Same objection.

THE COURT: Overruled.

(Whereupon, there is a brief pause in the testimony.)

Q The question was, Mr. Trump, you were aware?

I was waiting for the Judge.

Q He overruled it.

Sorry.

THE COURT: I'll try to speak louder.

THE WITNESS: Sorry.

Q I'll restate the question.

Mr. Trump, you were aware that this covenant was to be tested and certified each year based upon your Statement of Financial Condition?

Yes, which I could've done without a condition. I could've just shown them a couple of assets and they would have been very satisfied with that, if they wanted. They were focused on cash. I could have given them just a few assets which were worth much more than $2.5 billion.

Q But the terms of the contract required you to actually submit the Statement of Financial Condition, not some other information?

MR. KISE: Objection.

I don't know, but I think possibly.

MR. KISE: It mischaracterizes the evidence.

THE COURT: Mr. Wallace, are you mischaracterizing the evidence?

MR. W LL CE: I don't think so, your Honor.

MR. KISE: gain, he is speaking of entire term of

the loan as opposed to when the stepdown goes in. It doesn't characterize the evidence properly.

During the term that this provision is in force, then yes. But if the stepdown, as we've heard testimony on the Chicago loan, the guaranty went away.

MR. W LL CE: The guaranty --

MR. KISE: He was here for the testimony. I'm not telling the witness anything he doesn't already know.

This loan was paid off in full with no default -- with no problem, and the bank was thrilled. They got all their money back. There was no victim. There was no anything. This loan was paid off in full. It was a very successful loan as opposed to other people that don't do successful loans. So the bank was thrilled.

gain, the loan was paid off in full. You are talking about a loan that was paid off in full. There was no negotiation. If interest was due on a Saturday, I paid the interest on a Friday, and the bank liked me very much. But this loan is long since gone.

Q "Long since gone"? When did you pay off this loan?

I don't know. Very recently, but I paid off part of it a long time ago, and I think over the last fairly short period of time -- the loan is paid off.

Q Mr. Trump, are you aware --

I will check that as exactly, but I think it is paid

off or very close to being paid off.

Q I tell you this is why if we could just go through the questions I have. I was going to get to that at the end.

I'll ask you, are you aware that the Trump Chicago loan was paid off last week?

I heard it was. I don't know about last week, but I know it was paid off recently; on time, on schedule. In fact, I'll go a step further. I think it was paid off ahead of schedule. You could tell me. I think it was paid off ahead of schedule. The bank was thrilled.

Q nd why was it paid off ahead of schedule?

Because we have a lot of cash.

Q Who made the decision to pay it off ahead of schedule?

My son recommended it and I said do what you want to do. We had time left. We didn't have to pay it off. We had time left. I said, the interest rate is higher than what you get if you have your money in the bank, so.

Q Which son?

Eric.

Q Eric. Okay.

The question I asked before we had the interruption, I believe, was the contract actually refers to your Statement of Financial Condition. You did not have an agreement with Deutsche Bank where you could establish your net worth by using some other set of documents, did you?

I don't know. I just -- I don't remember much. I'm sure if I didn't want to put in my financial statement I could have worked out a cash transaction instead. In other words, guaranteed to keep a certain amount of cash in. But they knew I had a financial statement, so they probably just put it down. They knew I had a financial statement so they added it. I guess it's in number 11, or something, financial.

Q So is it your testimony that you made a decision to use the Statement of Financial Condition instead of a cash, additional cash requirement?

No, I think Deutsche Bank said, "Why don't you throw it in?" I'll throw it in. It didn't mean very much to them. What meant much, a lot to them, was that I had a lot of cash. That's what meant. nd they were paid off, as I said, in full. There was no victim. There was no loss of money. They made a lot of money. nd everyone is trying to figure out, why are you doing this for a bank that's very rich, very big, and had the best lawyers in the world. Nobody understands it. Well, I understand it. It's called politics.

Q Mr. Trump, do you believe you complied with this covenant we are looking at on the screen right now?

Yes.

Q If we go to the next paragraph, that's paragraph number 11. "Financial reporting and certain other additional covenants." It says that "Until the earlier satisfaction in

full of all guaranteed obligations and expenses are required under section 25 hereunder, or why, this guaranty is earlier terminated by lender or otherwise by its terms. Guarantor shall comply with the following additional covenant", item one, "financial reporting." (i)( ) states, " nnual Statement of Financial Condition. s soon as reasonably available and in any event within 120 days following each June 30th, guarantor's Statement of Financial Condition as of June 30th."

Do you understand that this guaranty agreement required you to provide an annual Statement of Financial Condition?

Well, I had it, so minds well give it to them.

Q Is that a yes?

Yeah, I had it.

Q Do you believe --

If I didn't have it, I wouldn't have had it put in this loan agreement.

Q Do you believe you complied with this covenant?

Yeah.

MR. W LL CE: We are going to hand up another exhibit.

(n exhibit was handed to the witness.)

Q Mr. Trump, this is the document that's been marked as Plaintiff's Exhibit 307. It's an amended and restated term loan agreement for 401 North Wabash Venture LLC as of June 2nd, 2014.

MR. W LL CE: If we could turn to page 96.

(Whereupon, the exhibit was displayed on the screen.)

Q Mr. Trump, is that your signature?

Yes.

MR. W LL CE: Your Honor, we would ask this be moved into evidence.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled. It's in evidence.

(Plaintiff's Exhibit 307 was deemed marked and admitted in evidence.)

Q We could put that one aside. If we could get Plaintiff's Exhibit 1844. This is already in evidence. We have a courtesy copy for the witness.

(The exhibit was handed to the witness.)

(Whereupon, the exhibit was displayed on the screen.)

Q Mr. Trump, this a document entitled " mended and Restated Guaranty", dated June 2nd, 2014.

MR. W LL CE: If we could just go to page 27, please.

(Whereupon, the exhibit was displayed on the screen.)

Q Is that your signature, Mr. Trump?

Yes.

MR. W LL CE: If we could go to page 13, please.

(Whereupon, the exhibit was displayed on the screen.)

Q gain, item nine, "Certain Representations." It states that "In order to induce the lender to make the loan", there are certain reps.

MR. W LL CE: If we go to item eight, it's on page 14.

(Whereupon, the exhibit was displayed on the screen.)

Q gain, the financial statements it says, "The guarantor has furnished to lender his prior financial statements. Such prior financial statements are true and correct in all material respects." nd little (i) "Guarantor's Statement of Financial Condition presents fairly guarantor's financial condition as of June 30, 2013."

Do you believe that that representation was true and accurate?

Yes. nd the loan, I believe was paid off.

Q Okay.

MR. W LL CE: If we could go to page 17, please.

(Whereupon, the exhibit was displayed on the screen.)

Q There's, again, a listing for certain financial covenants. gain, "Unencumbered liquid assets shall be maintained if not less than $50 million."

Were you aware that there was a minimum net worth requirement contained in this restated loan --

I think so, yes.

Q Okay. nd I will represent to you, if we go down a little further.

(Whereupon, the exhibit was displayed on the screen.)

Q It also contains -- the next page.

(Whereupon, the exhibit displayed was scrolled on the screen.)

Q " minimum net worth requirement of $2.5 billion."

Were you aware that there is a net worth guarantee in this restated guaranty?

I think so. I'm not sure, but I think so. Obviously there was.

Q re you aware that those amounts would be tested and certified by your annual Statement of Financial Condition?

No. But sounds right to me.

Q Okay. Do you believe you complied with those covenants?

Yeah, I paid off the loan.

Q If we look down item 11, little (i), the 11 is financial reporting and certain other additional covenants. Little (i) says, "Guarantor covenants and agrees that he shall keep and maintain complete and accurate books and records."

It then says, item ( ) " nnual Statement of Financial Condition, as soon as reasonably available. nd in any event within 120 days following each June 30th, guarantor's Statement of Financial Condition as of June 30th."

The first question, were you aware that you had to maintain complete and accurate books and records pursuant to this agreement?

I don't know specifically, but it sounds right to me.

Q Do you believe you complied with that requirement?

Yes.

Q Were you aware that under this agreement you needed to submit an annual Statement of Financial Condition?

Not really, but it would be okay with me.

Q So you don't know if this was accurate?

I wasn't sure. I mean, you know, I'm seeing it here, so obviously the answer to that is, yes.

Q Okay.

No problem.

(n exhibit was handed to the witness.)

MR. W LL CE: I would like to assure everyone we are making good time.

Q Mr. Trump, you've been handed a document that has been marked Plaintiff's Exhibit 309.

(Whereupon, the exhibit was displayed on the screen.)

Q The cover of the document indicates this is a loan agreement dated as of ugust 12th, 2014, with Trump Old Post Office, LLC and Deutsche Bank.

Mr. Trump, is this the loan that relates to the Old Post Office in Washington, D.C?

Yes.

MR. W LL CE: If we could flip ahead to 108.

Q Mr. Trump, is that your signature?

Yes.

MR. W LL CE: We ask that Plaintiff's Exhibit 309 be moved into evidence.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled. It's in.

(Plaintiff's Exhibit 309 was deemed marked and admitted in evidence.)

Q Mr. Trump, I'm going to hand you another document.

(n exhibit was handed to the witness.)

Q This document has been marked as Plaintiff's Exhibit 305.

(Whereupon, the exhibit was displayed on the screen.)

Q This is the guaranty for the OPO loan dated ugust 12th, 2014.

MR. W LL CE: If we could flip ahead to page 26.

Q Is that your signature, Mr. Trump?

Yes.

MR. W LL CE: Your Honor, we move Plaintiff's Exhibit 305 into evidence.

MR. KISE: Objection. Statute of limitations.

THE COURT: Overruled. It's in.

(Plaintiff's Exhibit 305 was deemed marked and admitted in evidence.)

MR. W LL CE: If we could go back to page 12, please.

(Whereupon, the exhibit was displayed on the screen.)

Q Once again, we see item nine, "Certain Representations." It states that "In order to induce lender to accept this guaranty and to enter into the loan agreement and the transactions thereunder, guarantor hereby makes the following representations and warranties as of the date hereof."

MR. W LL CE: If we flip ahead two pages to page 14.

(Whereupon, the exhibit was displayed on the screen.)

Q gain, item nine, "Financial Statements", it states "The guarantor has furnished to lender his prior financial statements. Such prior financial statements are true and correct in all material respects." nd little (i) "Guarantor's Statement of Financial Condition presents fairly guarantor's

financial condition as of June 30, 2013."

Do you believe this representation is true and accurate?

Yes, I think so.

MR. KISE: Which one? Both of them? The financial -- you asked that question -- I think you skipped from page -- just to make sure the record is clear, you went from page 12, then over to page 14 without asking a question.

MR. W LL CE: I'm asking him about the passage I just read.

MR. KISE: Just that provision, not the other? Not that the answer would be different. I just want to make sure the record is clear.

THE COURT: ll right. I think it's clear, now, you are asking him about little (ix).

MR. W LL CE: I thought I was clear the first time. We could keep moving. Let's turn to page 16?

(Whereupon, the exhibit was displayed on the screen.)

Q It's item ten, little Roman (i) "Unencumbered liquid assets."

Mr. Trump, were you aware that this loan required you to maintain unencumbered liquid assets of $50 million?

Yes.

Q Were you aware that this covenant is to be tested and

certified each year based upon your Statement of Financial Condition?

I think so, yes.

Q Do you believe you complied with this covenant?

Yes, absolutely.

MR. W LL CE: If we could move on to page 17.

Q Little Roman (iii), "Minimum net worth." gain, it says, " t all times during the term hereunder, guarantor shall maintain a net worth of not less than $2,500,000,000. This net worth covenant shall be tested and certified on an annual basis as of each June 30th, within 120 days following each June 30th, based upon the Statement of Financial Condition delivered to lender during each year hereunder pursuant to section 11 (i)( ) hereof."

Were you aware that this loan required you to maintain a net worth not less than 2.5 billion?

Yes.

Q Were you aware that this covenant was to be tested and certified each year based upon your Statement of Financial Condition?

No, but it would look like it would be. It's fine.

Q It looks like it is based on --

Yeah.

Q -- the contract language you just read?

Yes.

Q Do you believe you complied with this covenant?

Oh, yes, absolutely.

Q Let's look at the next paragraph.

gain, the net worth of me was far greater than the financial statements, far greater. So I don't know what you are getting at, but keep going.

Q When you say "far greater", are you referring to the brand value that you have?

I'm talking about -- no, but we can add that, too. If you add the brand value, which I didn't even put down on my financial statements, then you are talking about a tremendous difference, tremendous difference. But, no, just even without it. But with it, and it should be a part of it -- brand value should be a part of it. It's -- in either event, it's more.

Q Just --

The brand value is a very substantial value.

Q I just want --

nd I didn't even include that in the financial statements, but I could've if I wanted to. If I was looking to build up a financial statement, I would have put it in, but I wasn't looking to do that.

Q I'm just trying to make sure I understand that. Your position is that the assets listed on your Statement of Financial Condition were worth more than the prices that were on those statements; is that what you are saying?

s a -- yes. s a total, some are much more, some may have made a mistake and it was corrected. Like on the apartment if they made a mistake, and of course this is way before that, because you are going back into ancient history. I don't know how it doesn't involve a five-year statute of limitations. It seems ridiculous to me. It seems extremely unfair to me, but that's okay; that's the way it's been working in this one.

I will tell you that the numbers are far greater than the two and a half billion dollars. nd if I add brand value, then it's different from a different -- but in any event, the numbers of my net worth are substantially more than the numbers reflected on the financial statements, therefore, you have no case.

Q Um --

In addition to that -- no. In addition to that, in addition to that, you have a clause that goes on forever, I think a page and a half, and all throughout, and that clause, as we've discussed quite a bit, tells the lender of this money to go out and do your own work, do your own statement, do everything your own. Go out and hire your own analysts, and all of the things that, you know, that you didn't read today. You read one part of it, but you didn't read the part that supersedes everything else. But it says, "Do your own due diligence." nd I think a lot of people have figured that out today.

Q Well, that clause isn't the only thing goes on forever.

Next paragraph, number 11, Financial Reporting and Certain Other dditional Covenants. It says: The guarantor shall comply with the following additional covenants. Financial reporting.

It says: Guarantor covenants and agrees he shall keep and maintain complete and accurate books and records.

Did you comply with this covenant?

I assume so. I mean, the bank was very happy. They got their money back. They were paid off. I assume so.

Did you get any questions from the bank? I don't think so.

Q Do you know if --

The bank was extremely happy.

Q This is from ugust 12, 2014. Do you know whether or not you maintained complete and accurate books and records of the Trump Organization from ugust 2014 forward?

I hope so. I didn't keep them myself. I hope so. But again, the bank was paid off. There was no victim.

Q When you say, "I hope so," you don't know one way or the other?

I assume so. Who knows. Do I know? I have people. I pay them a lot of money. They are accountants. I assume they keep good records. The bank can't be upset and the bank

isn't upset, because they got their money back in full. No victim.

Q Who was responsible for making sure that the Trump Organization maintained complete and accurate books and records?

Primarily Mr. Weisselberg and Jeff McConney.

Q Item underneath this says --

nd the accounting firm. nd the accounting firm.

Q I want to make sure you are finished.

I paid a lot of money to.

Q Item underneath the financial reporting states: nnual Statement of Financial Condition. s soon as reasonably available, and in any event within 120 days following each June 30, guarantor's Statement of Financial Condition as of June 30.

Yes.

Q Do you believe you complied with this covenant?

Yes.

Q Okay. Mr. Trump, you are being handed a document marked as Plaintiff's Exhibit 394. This is a certification in your name dated November 11, 2014. nd if we flip over to the second page is that -- is that your signature, Mr. Trump?

Yes.

MR. W LL CE: Your Honor, we move Plaintiff's Exhibit 394 into evidence.

MR. KISE: Objection, statute of limitations.

THE COURT: Overruled, it is in.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 394 by the Court.)

Q Mr. Trump, if you look on page one, it says: The undersigned guarantor hereby certifies to lender as of the date hereof that as of June 30, 2014 (the reporting date) One. Financial Information. nd it lists attached hereto is guarantor's Statement of Financial Condition as of June 30, 2014.

I am going then if you look at the bottom underneath the section of financial statements it says: "The foregoing presents fairly in all material respects the financial condition of guarantor at the period presented."

So by this document you are certifying that your Statement of Financial Condition as of June 30, 2014 presents your financial condition fairly in all material respects. Is that correct?

No.

Q What are you -- so what are you certifying here?

Because we didn't put the brand value down, and that's a bigger number than any of these numbers, and they are very big. But I didn't put the brand value down, so, you know, so I don't know. I think that the statement could have put it

down, didn't put it down. But I don't know if you consider that to be a material respect. It would increase the number beyond even what it is.

Q So is it your position that this certification is not accurate?

No, I think it is accurate as it is. But the only thing is that we didn't include brand value. nd you could include it or you don't have to include it.

Q Setting aside the brand value issue, are you certifying that the June 30, 2014 Statement of Financial Condition fairly presented in all material respects your financial condition as of that date?

Yes.

Q But the 2014 statements contained an inflated value for your triplex apartment; is that correct?

Yeah, they -- that's right. If this is the one where that's started. We reduced that substantially later.

Q nd the statement contained an inflated valuation for Seven Springs; is that correct?

Seven -- I don't know. I don't know if this is the one. If this is the statement. Is that the statement that we discussed before?

Q Yes, that has Seven Springs.

Then we had those and we made adjustments to them.

gain, compared to the overall worth or net worth,

they were not material. But certainly I could say that we have asked -- I asked to have them reduced and they were reduced.

Q You were required to submit the certificate under the terms of the Doral loan agreement; is that correct?

I guess so. I would think so.

Q nd you knew that Deutsche Bank would rely on this certification to determine compliance with the loan companies; is that correct?

Well, they have that in there, yeah. I could have negotiated it out. But it didn't matter to me because we had a financial statement, so I figured why not put it in.

Q You intended to meet your obligations under the Doral loan agreement by submitting this document; is that correct?

Yeah.

Q Mr. Trump, we are going to hand you a new document.

(Handing)

Q This document has been marked as Plaintiff's Exhibit 503.

Mr. Trump, this is an internal Deutsche Bank e-mail dated May 10, 2016, but I would like to ask you about the attachments. The attachment is a certification in your name dated May 10, 2016.

nd if we could flip ahead to the third page of this document, is that your signature, Mr. Trump?

Yes.

MR. W LL CE: Your Honor, we move Plaintiff's Exhibit 503 into evidence.

THE COURT: Granted, it is in.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 503 by the Court.)

MR. W LL CE: I am sorry, I didn't realize there was no objection. Is this in?

THE COURT: Yes.

MR. W LL CE: I apologize everyone.

Q If we look back at the first page of this document, again, under the heading Financial Information. Mr. Trump, are you certifying that your Statement of Financial Condition as of June 30, 2015 presents your financial condition fairly in all material respects?

If this is the one we discussed before, then we told them a couple of the assets you could reduce.

Q This is actually a different one.

different one? Then it would be fine, yeah.

Q Do you recall whether or not the 2015 statement had corrected the valuation for your triplex apartment?

I don't know. I don't know.

Q Do you recall whether the 2015 statement had corrected the value for Seven Springs?

I don't know. But it really wasn't material compared

to the overall net worth. It was a rather -- it was a small amount of money in comparison to the overall net worth.

Q Okay.

I don't think it would be considered material at all.

Q If we could go to the top page of the document again, I just want to highlight one thing for you.

Do you see the borrowers listed here are Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; and Trump Old Post Office LLC. So you were required to submit this certificate under the terms of all three loan agreements; is that correct?

I guess, yeah.

Q nd you knew that Deutsche Bank would rely on this certification to determine compliance with the covenants of those loans; is that correct?

No, I don't know. I don't know what they would have done if I had a statement or not, but I had no problem because we had a statement.

Q If Deutsche Bank wasn't requiring this to be submitted, why would you have submitted this?

No, I would have negotiated that out. They would have taken cash instead.

Q But you did, in fact, have an obligation under those loan agreements to submit this certification?

Yeah, I have no problem with that.

Q nd you intended for the bank to rely upon this certification to meet those loan requirements; isn't that right?

Well, it is what it says. If I didn't have the statement I would have done something else. I would have given them cash instead, or not borrowed the money.

Q Mr. Trump, we have now seen multiple loan agreements requiring the submission of your Statement of Financial Condition. We have seen multiple certifications that the Statements of Financial Condition were accurate. Is it still your position that the bank would not have considered this to be an important document?

I could have done different things other than a financial statement.

Q I am actually asking under the loan agreements you actually signed though, was this an important document?

Yeah, because we had the document done, so we used it.

Q Mr. Trump, we talked about this a little, not in response to a question, but you have now paid off all three loans to Deutsche Bank; is that correct?

I think so.

Q You financed the Doral loan with an xos Bank; is that correct?

I believe so, yes.

Q nd you paid off the Chicago loan recently, maybe last week?

With cash, yes.

Q nd you paid off the OPO loan and you sold that hotel; is that correct?

Yes, we paid that off with cash.

Q Mr. Trump, you are being handed a document that has been marked Plaintiff's Exhibit 1373. This is an e-mail from Jeff McConney to Elizabeth Pettijohn and Whitley Penn with the subject line: OPO proceeds spreadsheet.

Whitley Penn are the accountants who replaced Mazars; is that correct?

Yes.

MR. W LL CE: Your Honor, we would move this document into evidence.

MR. KISE: Objection, relevance.

THE COURT: What's the relevance?

MR. W LL CE: The relevance it has the distribution amounts for the OPO loan.

MR. KISE: What is the relevance of that?

MR. W LL CE: I think it is subject to disgorgement potentially.

THE COURT: Overruled. It is in.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1373 by

the Court.)

Q Mr. Trump, if you look down at the bottom half of the first page, there is an e-mail from Patrick Birney to Donna Kidder and others that says: Mark, Mike, Donna, see attached updated spreadsheet. ssuming we get to the $139,404,324 from the title company today, and combine it with the $3,823 of interest on the deposits that is already in the bank account, the amount of the distributions should be in the amounts below (listed in row 31 of the second tab).

MR. W LL CE: ctually, could we pull up the other attachment to this, just to -- it is 1373 native.

I apologize.

Q I just wanted to state for the record, Mr. Trump, this is the attachment that Mr. Birney is referring to. It is a native.

MR. W LL CE: nd just to clarify for the record, we have moved in both the cover e-mail and the native attachment. I just want to make sure that is clear. I want to see if there is any further objection from the defense.

THE COURT: They are both in.

MR. W LL CE: Thank you, Your Honor.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1373 Native by the Court.)

Q If we can go back to the cover e-mail. The amounts listed are: DJT $126,828,600.

DJT Jr. $4,013,024.

IT $4,013,024.

ET $4,013,024.

Member Corp. $540,475.

Total $139,408,146.

Mr. Trump, do you know if $126 million represents your full profit on the OPO transaction?

No, I don't know that.

Q Do you know how much profit you did earn on the OPO transaction?

No. Something, I don't know. Something above that I think. But around. I would have to find out. I would have to go check.

Q So you think above but around this number?

bove but around that number, yes.

Q nd do you know if one -- the $139 million listed here reflects the full profits of all of the participants in the OPO sale?

I don't know exactly, but it would be something perhaps above that number.

Q gain, but around that number?

Correct, yes.

Q Mr. Trump, I think we have covered some of this but I

would like to go through it one more time. Do you believe any of the Statements of Financial Condition that have been prepared in your name inflated your net worth?

So --

MS. H BB : I am sorry, I couldn't hear you.

gain, we have a very complicated, many transaction, many, many, many-pages document. The overall number is somewhere much higher. nd some are a little bit lower or not materially lower. But the overall net is that we are much, much higher, much, much higher than the document -- the document submitted.

When you add the net worth you are talking about many, many millions of dollars more than that. nd we didn't do that. If we wanted to build up a net worth all I would have had to do is add that, because that number would be very substantial, very, very substantial. So I don't believe that --

I think this case is a disgrace. I think it is a disgrace for people looking to move their business into New York or out of New York. Many people are leaving New York because of exactly this kind of a thing. We had banks that got their money back. We had insurance companies that got their money back. We had no complaints. The only complainant is you. nd with everybody being killed on the streets and murdered on the streets of New York and you have an ttorney

General sitting here all day long watching every little move, I think it is a disgrace. nd people are leaving New York. nd they are fleeing the City. nd it is a shame what is going on.

nd we sit here all day, and it is election interference because you want to keep me in this courthouse all day long, and let's keep going.

nd we have a very hostile Judge, extremely hostile Judge, and it is sad.

I don't have a jury and I want a jury. nd I don't have a jury because she sued me under a statute that doesn't allow a jury, and I think it is a disgrace. nd other people are saying the same thing. Legal scholars are saying it is the most unfair witch hunt they have ever seen.

nd you should be ashamed of yourself.

Go ahead.

Q I promise you, Mr. Trump, I am trying to get you off the stand.

That's great. I am sure you are.

THE COURT: Mr. Wallace, this morning I said I am following your lead in terms of how much you want to put up with this stuff.

MR. W LL CE: I promise you, Your Honor, we are very close to the end.

Q nd we almost got there, Mr. Trump.

But I believe your position is that you do not

believe that any of the Statements of Financial Condition inflated your net worth; is that right?

I think that the Statements of Financial Condition were very good, were actually somewhat conservative and in some cases very conservative.

nd they are totally protected, and so am I, and so is everything in there, by a disclaimer clause which tells lenders and insurance companies or anybody that saw it, to go out and do your own due diligence and do your own analysis. It says: Do not rely on this statement.

Q Do you believe that Mr. Weisselberg and Mr. McConney did a good job preparing your Statements of Financial Condition?

I mean, I don't know, but I think so.

Q Did Mr. Weisselberg and Mr. McConney prepare the Statements of Financial Condition in a manner that you believe is appropriate?

I hope so.

Q Did Mr. Weisselberg and Mr --

Don't forget, the bank -- the banks reject them. These banks are not just people that sit back and take paper and put it into a file. When a bank gets a statement they go out and check them very carefully. They are very sophisticated. They have great lawyers, very expensive lawyers working for them. The best law firms in the country. So this

isn't just like, oh, here is a paper. The bank would check the work that these people did.

Q So the banks would review the Statements of Financial Condition?

bsolutely. bsolutely.

Q Did Mr. Weisselberg and Mr. McConney prepare the Statements of Financial Condition in a manner that you agreed with?

I guess so. I mean, I would have to say so. The banks seemed to be happy, and Mazars seemed to be happy.

I had an, again, very expensive accounting firm. They seemed to be happy. They didn't complain.

nd if they did complain, they wouldn't have done the statement. They did come to me on one or two occasions and said they didn't like something or didn't like this or that, and it was corrected before the statement was done. nd if they didn't like something they wouldn't have given us a statement. They gave us a statement.

THE COURT: I am going to date myself. But I feel like it is a broken record. There are old vinyl records that go around and around.

THE WITNESS: Because he doesn't understand it, Your Honor, maybe. Because he keeps asking me the same questions, Your Honor, the same questions over and over again.

Q Let me ask you a new question then.

MR. KISE: He has asked the question about 50 different times. We sat here for almost an hour going through what appears to be a breach of contract case, going through provisions of documents that the bank and only the bank are entitled to enforce. nd they didn't.

nd so now when the witness has a great answer, it is a problem. So Mr. Wallace just keeps asking the same question, he is going to get the same answer.

THE COURT: Only the banks are entitled to enforce?

MR. KISE: They are. That's what a contract is all about. This is a contract, and a breach of contract is where one party to the contract gets to decide if a term was breached.

For example, the net worth covenant. If the bank determined -- it doesn't say in here that anybody else other than the bank gets to determine whether that covenant was breached.

THE COURT: It doesn't have to.

MR. KISE: If they didn't determine it was breached and you heard testimony from Mr. Haigh that indicates that, then yes, that's their right to do it.

We don't get to second guess them. The ttorney General doesn't get to come in and stand in the shoes of a

contractual party that isn't claiming a breach. There is no provision in the law for that.

But if Mr. Wallace wants to continue to ask the same questions in a slightly different way, he can expect to get the same answers.

THE COURT: Well, I'll leave it at that for now.

MR. W LL CE: I promise everyone here I am really getting as close to being done and we can get out of here.

Let me ask a different question then. Did the fact that Mr. Weisselberg pled guilty to tax fraud cause you to change your opinion of any of the work he performed for you?

Well, it was a sad, very sad thing. People went after him viciously and violently because he happened to work for me. If I never ran for President and certainly if I never won, convincingly, he would have been just like a lot of other people. I mean, he did a good to job for me for a long time. I thought it was a very sad thing.

The education of his grandchildren was brought up because he paid for the education of his grandchildren in a certain way. There was some things. So I feel very badly for him.

Q Well, a certain way was you paid for the education of his grandchildren?

No, the education of his grandchildren, and that is, you know, going to be some kind of a breach where they want to put a man in jail? It is a very sad thing.

Q Were you aware --

He did a good job for me for a long time.

Q So you didn't go back and review any of the work he had performed after?

I didn't think about it. nd frankly, if you talk about these loans, there was nothing much to think about because essentially they were all paid off or soon to be paid off.

Q fter Mr. Weisselberg pled guilty, did you do anything to review other work that he had performed for you outside of these financial statements?

No, because I had no defaults. I had no problems.

Q Did you go through to see if Mr.-- any of the other documents Mr. Weisselberg had prepared at the company were accurate?

I don't know. Perhaps somebody did. I really don't know.

MS. H BB : Your Honor, excuse me. Sorry.

Mr. Wallace, can you just clarify, are you asking whether President Trump himself did or the company? I want to make sure the record is clear. There is a difference.

MR. W LL CE: I am not going back to a question I asked and was answered.

MS. H BB : Of course not. It is inconvenient.

THE COURT: I took it to mean Mr. Trump personally.

MS. H BB : So did I.

Personally? Personally no, but I think maybe the company did. I don't know.

Q Were you aware that Mr. Weisselberg was being compensated with an apartment that was paid for by the company?

You mean previously?

Q Yes.

Yeah. I mean, is there something wrong?

Q No, I am just asking if you knew.

I mean IBM executives get apartments that are compensated by IBM. nd lots of other companies do. But people that work for me can't be so compensated? I don't know, I don't think that's a big thing. Is it? I feel very badly about that whole situation.

Q My question is just whether Mr. Weisselberg was -- you ever became aware that Mr. Weisselberg was not recording transactions in the books and records of the Trump Organization in an accurate manner -- inaccurate manner.

Let me rephrase that.

MR. KISE: re you talking about prior to his

guilty plea or after his guilty plea?

MR. W LL CE: I am asking if Mr. Trump ever became aware that Mr. Weisselberg was recording transactions inaccurately in the books and records of the Trump Organization.

MR. KISE: fter his guilty plea I think we all did.

THE COURT: This has come up before, Chris. He is allowed to ask a question without a time limit, because then it means all times, at anytime.

MR. KISE: Okay, but it is --

THE WITNESS: He wasn't making it clear.

MR. KISE: The record is -- most of this record is very confusing, but that's particularly confusing, respectfully.

Q The question is, did you ever become aware that Mr. Weisselberg was recording transactions inaccurately in the books and records of the Trump Organization?

Only through the trial.

Q nd that's the tax fraud trial?

Yeah.

Q You are not going to make any changes to your internal controls because of this lawsuit, are you?

MR. KISE: Objection. It is a question, number one, could call for privilege and number two subsequent

remedial measures.

It depends.

THE COURT: Overruled on both grounds.

It depends on what the accounting firm -- we have a new accounting firm, and they are doing a very good job. nd it depends. If they suggest that we make changes, we would do that. We asked them if they would like us to do that.

Q That accounting firm, is that WhitleyPenn that you are referring to?

Yes.

Q Do you think that l anything needs to change at the Trump Organization based on the things you have learned from this lawsuit?

MR. KISE: Same objection, Your Honor.

I don't think so.

THE COURT: Overruled.

MR. KISE: I am assuming that his question is not calling for him to reveal any attorney/client conversations, just asking in general.

THE COURT: He asked him what he intended to do.

MR. KISE: Certain information he may have received from his lawyers.

MS. H BB : Yes. I would instruct --

MR. KISE: nd subsequent remedial.

THE COURT: The subsequent remedial only applies

in personal injury cases, tort cases.

Q My question is, regardless of who is giving the advice, is there a decision to make a change to the internal controls of the Trump Organization.

It would depend on what the accounting firm would say, probably in conjunction with some lawyers that do this professionally. But the company has been a very, very successful company and it has had a great record.

Q re you aware, as you sit here today, of any changes -- let me withdraw that question.

s you sit here today, are you aware of any planned changes to the financial reporting systems of the Trump Organization?

I have not heard of any, but it is possible that they will recommend something. I have actually asked for a recommendation, if they feel it is necessary.

THE COURT: So now we are getting --

MR. W LL CE: I am going to ask this question hopefully to clarify this.

Q You asked for a recommendation from accountants or attorneys?

MS. H BB : Don't answer that question, sir. Excuse me. Sorry. This is actually going to privilege. nd I am going to object and instruct my client, any conversation where an attorney was also involved, you are

not to respond.

MR. W LL CE: This is the foundational question as to whether he has had conversations with attorneys or accountants.

MR. KISE: Your Honor, I have one other thing to add by way of objection. It may be overruled, but I think it is an important objection. nd that is, I think the question is either unintentionally or intentionally mischaracterizing the evidence that is already in the record. They already had Mr. Hawthorn on the stand, and Mr. Hawthorn has testified about things that the company is doing.

So, I believe President Trump was here for that testimony. So again, we are not telling him anything he doesn't know. But you are not allowed to intentionally mislead or unintentionally mislead, mischaracterize the evidence in the record. The evidence in the record is such, if he already knows the answer, he doesn't have a good faith basis to ask the question.

THE COURT: I will totally disagree with that. In fact, you are generally supposed to ask questions that you do know the answer to.

MR. KISE: No. No. If you have a good faith basis to presume that the answer is something other than is already indicated in the record.

MR. W LL CE: I would note then, I guess if Mr. Hawthorn is recommending anything, Mr. Hawthorn is not an attorney. But I'll ask the same question.

Q s you sit here today, are you aware of any changes that are going to be made to the financial reporting system at the Trump Organization?

There will be recommendations made, and we will perhaps let you know what those recommendations are. It wouldn't bother me to let you know about it. But we have asked and we will see whether or not anything will come of it.

Q re the recommendations you are referring to coming from accountants or lawyers?

I would say accountants and I would also say lawyers working with accountants, yes.

Q Have you spoken to any accountants about potential changes to the financial reporting system at the Trump Organization?

Through the company, not me personally, but through the company.

Q Who have you spoken to at the company?

Eric Trump.

Q Do you have any plans to hire a Chief Compliance Officer at this time at the Trump Organization?

It hasn't been recommended.

Q Have you hired a new Chief Financial Officer at the

Trump Organization?

I don't know. I would have to ask one of my sons, one of my two sons.

Q s you sit here today, you don't know who the Chief Financial Officer is?

We have some very good people. I don't know if we are making that permanent or not or if we are going to go outside.

MR. W LL CE: Your Honor, I have nothing further at this time for this witness.

THE COURT: Will there be any cross examination?

MR. KISE: No, Your Honor. Not at this time.

MR. W LL CE: Your Honor, the next witness we have is --

THE COURT: We will excuse this witness.

Thank you.

MR. W LL CE: I apologize, Your Honor.

(The witness stepped down from the witness stand.)

THE COURT: We can keep going, at least for a while. Would you like to call your next witness?

MR. W LL CE: The only additional witness we have, Your Honor, is Ivanka Trump, who is appearing on Wednesday. So at this point I think that's it for us.

I don't know if Mr. Kise wanted to cover any of

the housekeeping items.

MR. KISE: Just briefly, Your Honor.

THE COURT: Go ahead.

MR. KISE: nd I appreciate the communication over the weekend.

I just want to make sure, because the way we have operated, and I am going to take whatever direction you provide here, but the way we have operated through the course certainly of the trial are, in limine motions are either done here on the record or there is letters.

nd so by way of example, an evidentiary motion wouldn't be something we would do by notice of motion and have a return date. The same would be true for any sort of mistrial motion or directed verdict motion. Mr. Robert is the CPLR expert, but certainly in my experience those wouldn't be done -- you wouldn't do a directed verdict motion by notice of motion, so that it would be heard a week later; or a mistrial motion --

THE COURT: Right.

MR. KISE: -- or evidentiary motion or those things. So I just want to comply fully with Your Honor's order. I want to make sure that I understand how we are supposed to manage that, to the extent that we have such motions.

Same would be true with respect to any appeal we

filed, or any other thing we filed. I assume if -- I think it is fair to presume based on the colloquy we had on Friday, that should any of the matters that have come up that are the subject of the gag order, be the -- become the subject of an appeal, that we would be free to reference them on appeal. There wouldn't be any restriction on that.

THE COURT: Yes, true, agree.

MR. KISE: nd we will take your direction. I am not putting you on the spot. You can give us your direction this evening. But I just want to -- it just seemed very foreign to me, and Mr. Robert can speak to this, that if we were to have a directed verdict motion or mistrial motion or evidentiary motion or anything to do with the subject matter of the gag order that would include that, those wouldn't be by way of notice of motion ordinarily.

I just don't know how we would do that, because we would be asking the Court to rule on something days hence that are more immediate.

Mr. Robert can speak to the CPLR.

MR. ROBERT: I think Mr. Kise said it succinctly and well. When and if the plaintiff rests their case, there will be certain motions I presume we will make. nd at that time there would be oral motions. nd some of the

issues contained within your gag order of Friday may be items that need to be referenced in that application. We just wanted to make sure under your order, since there will be no written motion papers with those, that we are free to address those on the record with the Court at that time. Because there is really no -- there is no other mechanism that I am aware of in New York to be able to bring that up to you.

MR. KISE: Or would you prefer us to submit a letter and only make the oral presentation brief? Whatever Your Honor's pleasure is there. But we want to understand what the limits are because the order as written, and I appreciate the clarification over the weekend, but as written it is restrictive.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

THE COURT: Yes, I'm restricting you not bringing up my confidential communications. You could do anything else. I don't think the gag order referred to anything else.

MR. KISE: But in terms of a motion, if we file a motion that is directed to that particular relief, like, for example, a motion for reconsideration, or anything like that, we have to reference the subject matter in whatever we are filing, whether we are viewing it on the record here or whether we are submitting it by letter, but by notice of motion; there's not a procedural mechanism to do that.

THE COURT: If we are just talking about motions, requests, decisions about my confidential communications, I'm prohibiting you from mentioning that. Okay, you could appeal it, but I am 1,000 percent convinced, and you don't have any right or reason to complain about my confidential communications. You could appeal that.

MR. KISE: But, your Honor, so let me just be clear. So if we have matters that you may not be aware of that relate to that subject matter, it doesn't relate to the, necessarily, the communications themselves, it's not the notes.

MS. H BB : Not the notes, your Honor.

MR. KISE: But to the issues surrounding that procedure, are you saying that you have already decided

before we make the motion that you will deny it without having seen it? I just -- because I can't make them -- I just need to know, because ordinarily I would either include it in some sort of motion for your Honor so that at least you could see the basis for it and then make your determination; that's all.

THE COURT: I'll take you up on your kind offer to think about this, take this under advisement. Obviously I think these other things that I think you are referring to, that's a different story.

MR. KISE: Right. It would just be with respect to the implications. It's not referring anymore to -- I understand the record that you've established, you said that we've established, and I understand your order in that regard, but with respect to appeal, I understand you clearly on that, that we have the right to do that. nd with respect to anything we file here, it would only be referencing those issues in the context of a motion directed at relief with specific arguments that are related to that, not to do with the content of the notes themselves, at all.

THE COURT: No, it's not even the content. I am prohibiting you, or I have already, from referencing my confidential communications. Sorry to keep repeating that phrase. But I feel it's important for the safety of my staff and the orderly progression of this case.

MR. KISE: Of course. But if we were, for example, to move for a mistrial based on the implications of that, we would need to at least reference the subject matter in order to file that motion. There's no way to file that motion without referencing the subject matter. We don't --

THE COURT: Don't file that motion, Chris.

MR. KISE: Well, again, so we can't file the motion that you haven't seen that couldn't be considered. You may not know what it is that is our position, because I don't think our position has -- I certainly haven't said it anywhere out loud, and I don't intend to.

THE COURT: ppreciate that.

MR. KISE: But I think there's something that warrants the Court's attention with respect to the implications of these issues. nd you are free, then, to adjudicate them. But I would think we can't be respectfully precluded from raising the issue in the first instance; that would seem to put us in a position where we are not entitled to advance our client's due process rights.

If there is something that we think implicates the proceeding, we have to at least put it in the record for the Court to consider. nd if you consider it and reject it, that's fine. But you can't, respectfully, reject it before you've seen it. Because you haven't heard it from me either on the record or otherwise.

THE COURT: I'm, in some ways, at a disadvantage in this discussion, because I don't know what you are going to bring up.

MR. KISE: Correct.

THE COURT: I told you what not to bring up. nything else you want to bring up.

MR. ROBERT: For clarification purposes, then, is it the direction and order of this Court that if we were to move for a mistrial based on the grounds that are subject to the gag order, that we are directed not to make such a motion.

THE COURT: Can you repeat that.

(Whereupon, the requested testimony was read back by the court reporter.)

THE COURT: Yes. I'm directing you not to make such a motion because I'm entitled to do what you're referring to, the only subject matter of the gag order.

MR. KISE: But that --

THE COURT: I'm going to protect my staff.

MS. H BB : Your Honor --

MR. KISE: I understand that, your Honor, but that would -- the fact that it is taking place is not necessarily the subject of the motion.

MS. H BB : Okay. I'll be more clear, if I may. I think they are being extremely careful, and it's causing

confusion, your Honor, so don't sanction me. I'm doing this in the most delicate way possible.

I personally -- we know that we, obviously, are going to be moving for a mistrial. There's no, you know, that is part of the plan. We do not want to put anyone at risk, which is what they are trying to get at.

I -- outside in the way I read your order, which is different than they do, I think that you are specifically speaking about the contents of your notes being confidential, and that is what we are not to talk about; is that correct?

THE COURT: Not just the contents of the notes, which I assume you don't know, but the fact that they exist.

MS. H BB : Okay.

THE COURT: That's my business, not yours.

MS. H BB : So outside of the notes, your Honor, other issues have come to our attention. re we allowed to address anything outside of the notes? Because they haven't been addressed with the Court, and I think that's the clearest way to ask your Honor, what we are asking, which is we need to have an opportunity to be heard on those things that have not been yet heard.

THE COURT: Give me a second to have a confidential communication.

MS. H BB : That's fine, your Honor. That's fine.

(Laughing.)

THE COURT: Okay. How's this: I think this is fair, and I understand your concerns. You can make that motion, Ms. Habba.

MS. H BB : Thank you.

THE COURT: nd I'm sorry I yelled at you before.

MS. H BB : We will do it in a very delicate manner.

THE COURT: Okay. But it has to be in writing. I don't want to hear it in front of hundreds of people --

MS. H BB : ll right.

THE COURT: -- at this point. Later on we could see, but yeah, you could make that motion.

MS. H BB : Thank you.

MR. KISE: So we should submit that just by letter then, because notice of motion for a mistrial doesn't function that way.

THE COURT: Yeah. Do it by order to show cause, please. You could make it as quick as you can.

MR. KISE: We could do that.

MS. H BB : That's great.

MR. KISE: Mr. Robert --

MR. ROBERT: I've never seen an application for a mistrial done by order to show cause on paper like that, but as long as the order to show cause is signed by the Court, I

don't see a problem with it.

THE COURT: I'm not sure that that -- I guess that --

(Whereupon, there is a brief pause in the proceedings.)

THE COURT: Submit an OS -- proposed OSC. It's not an order until the judge signs it. Mr. Robert knows that. Submit a proposed OSC to me and I'll get right to it and make a quick return.

MS. H BB : Okay.

MR. KISE: nd we can include in there the rationale for the Court.

THE COURT: Yes.

MS. H BB : Thank you.

MR. ROBERT: Thank you, Judge.

THE COURT: See. I knew it would be a lovefest.

MR. KISE: Thank you, Judge.

THE COURT: I've used that line before, but some of you haven't heard it yet.

nything the plaintiff wants to say?

MR. W LL CE: I guess it would be helpful for the people to clarify the rest of the week. We have Ivanka Trump testifying on Tuesday -- Wednesday after the Tuesday holiday. I imagine it could be 3:00 or it could be the full day, but I imagine that means the defendants are calling

witnesses on Thursday and Friday, and so it would be helpful --

MR. KISE: We are off Friday.

THE COURT: We are off Friday.

MR. W LL CE: May I say, witnesses will be called next by the defendants starting on Thursday, and it would be helpful to know what the order would be. I understand it may be Donald Trump, Jr. and Eric Trump, but I don't know if they are going Thursday or --

MR. KISE: So we had held -- again, we'll do -- I'll take the Court's direction. So we had held Thursday, as a spillover day, in the event that President Trump needed to come back, as agreed, or in the event it's possible that Ivanka Trump was hold over. We are certainly going to ask her questions, to the extent we have questions. We are trying to get that done now so as to minimize the interference in her life to not have to come back again. nd then thereafter we would likely be making certain motions on Thursday.

So we had planned to -- because of that, to ask the Court that we would just -- to keep this organized, to begin our case in chief on Monday, that way we are not starting a case with an hour left on Thursday or two hours left on Thursday, to just begin our case in chief on Monday.

We do have -- this may -- it certainly was pleasant

news for me. We do have a schedule now that has us completing our case, right now, by December 15th.

THE COURT: week early.

MR. KISE: week early. I don't want to hold to that, because nothing ever gets done on time here, but I'm offering that because we could still stay in the Court's parameters, if not sooner, even if we start on Monday. So that -- we can start on Thursday, but then that would be a different witness. That's likely to be a witness different than Don Jr. or Eric, and that's what I meant in my communications with Mr. Wallace over the weekend, which we had been communicating about witness order.

If we are going to start on Thursday, particularly Thursday afternoon, we are gonna to have to see availability and we could tell them. It would be certainly among the handful of witnesses that we have at the top, and I could give more clarity on that this evening, but I would just ask the Court that for efficiency purposes, and given this is a long trial, that we just start -- so we don't run into the train wreck of spillover and motions going on, that we just start on Monday.

THE COURT: You know, you said in a certain context, "nothing ever finishes on time", or something. I've been meaning to thank and congratulate all the lawyers for the fact that we managed to start this trial on

October 2nd, come hell or high water, written in stone, and you did a Herculean job to get this ready. I hope you think, although you are rushed, although you were pressed, you had enough time and there was no deprivation of due process, shall we say.

nd same thing for the plaintiff's attorneys. It was an amazing job to get as far as we've gotten in the time we have.

ll right. Let's try to figure out exactly what we are going to do.

MR. W LL CE: I -- your Honor, I would just ask Chris, if you could, and we won't hold you to it, but give us that lineup that gets you to the finish line of your case by December 15th.

MR. KISE: I can.

MR. W LL CE: We would appreciate that. I don't know if we are going to have a rebuttal case. I don't know what is going to go on, so do we finish by December 22nd, we do, we will, but --

MR. KISE: It would be on them, not me.

MR. W LL CE: If they could just provide us with the order of witnesses that they think gets --

MR. KISE: We could provide a tentative order, but, again, with all your case as well, witnesses change and schedules change. We could provide a tentative order that

would get us to that place, and even starting on the Monday.

THE COURT: Let's be very exact here. With basically through today, once we finish this discussion, all right, what's going to happen Wednesday morning?

MR. W LL CE: Wednesday morning the People will call Ivanka Trump.

THE COURT: Right. How long -- I'm asking both sides. How long will her total testimony, at this point, take? day? day and a half? Less than a day?

MR. W LL CE: Two to three in the afternoon we would expect to be completed with her examination, your Honor.

MR. KISE: If that's the case, then we will almost certainly go to at least through the morning on Thursday, on the next day.

THE COURT: Okay.

MR. KISE: t least we'll have an hour plus another two hours in the morning. So we would -- depending on what they ask it may go longer than that; it may not. But we'll at least be moving well into Thursday, as it stand now based on their representation. nd then we would have motions in the afternoon.

THE COURT: nd how long do you think the motions will take?

MR. KISE: That could take --

THE COURT: That could take a long time?

MR. KISE: That could take the balance of the afternoon, yes.

THE COURT: Plaintiff, does that sound reasonable to you?

MR. W LL CE: I'm having a hard time imagining meritorious motions that would require that much time to discuss.

MR. KISE: Of course.

MR. W LL CE: But that's fine, I think, from our perspective.

THE COURT: The question isn't whether they are meritorious. The question is how long they'll take.

MR. W LL CE: I know.

THE COURT: Mr. Kise, I think your schedule makes sense.

MR. KISE: Thank you, Judge.

THE COURT: Make your motions Thursday after Ivanka is finished, and you'll be ready to go the following Monday.

MR. KISE: Yes, your Honor. We'll provide them maybe as soon as this evening. In fact, probably this evening, that tentative schedule.

THE COURT: We would like a copy of that list, too.

MR. KISE: Okay, yes. We could provide that to the

court, your Honor. gain, not holding us to it, because things change and witness's schedules come and go.

THE COURT: Of course.

MR. KISE: But we could at least provide something. nd I would like to not file that on the record. We could provide it to the Court, but not have that out there, because this --

THE COURT: Let's assume that, but possibly revisit. I'm still waiting for you to say that your motion or motions on Thursday might be granted. You might not have to put on a defense.

MR. KISE: Well, I certainly hope so.

MS. H BB : So do I, your Honor.

MR. KISE: I think there is a basis for it, and we would all be happier for it. lmost all of us.

MS. H BB : I could make my application now for you to dismiss this entire case.

THE COURT: Save it for Thursday.

MR. KISE: My family certainly would be happy. I could assure you of that.

MR. W LL CE: Procedurally, we haven't rested, so they can't make the motion for a directed verdict yet.

THE COURT: Everybody have a great Election Day and don't forget to vote.

MR. KISE: Thank you, Judge.

THE COURT OFFICER: Everybody remain seated.

(The case on trial was adjourned to Wednesday, November 8, 2023 at 10:00 a.m.)

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In The Matter Of:

NYS ttorney General v.
Donald J. Trump

November 8, 2023

Ny Supreme Court- Civil

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : Part 37
----------x

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

Index: 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.

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60 Centre Street
New York, New York 10007
November 8, 2023

BEFORE: HONORABLE ARTHUR F. ENGORON, Supreme Court Justice

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THE COURT OFFICER: All rise. Part 37 is now in session. The Honorable Judge Arthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to the members of the press. There absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Plaintiff, would you like to call your next witness?

MR. SOLOMON: Yes. Good morning, your Honor. The people call Ivanka Trump.

THE COURT: Who's she?

MR. KISE: You know, while we're waiting, I could get used to this every other day thing.

THE COURT: I think you are speaking for all of us. Are you going to go back down to Florida the Wednesday before Thanksgiving?

MR. KISE: Not enough to do that, but still, having the every other day.

THE COURT: But your day off, do you work or do you play?

MR. KISE: Unfortunately, looking outside of yesterday's weather, yeah. I stayed in the window.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness stepped into the witness

stand.)

THE COURT OFFICER: Please raise your right hand.

(The witness complied.)

THE COURT OFFICER: Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE COURT OFFICER: Please have a seat.

THE WITNESS: Thank you.

IVANKA TRUMP, called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

THE COURT OFFICER: Please state your name and either home or business address for the record.

THE WITNESS: Good morning. Thank you. Ivanka Trump, and it's 36 Indian Creek, Indian Creek Village, Florida 33154.

THE COURT: Mr. Solomon, please proceed.

MR. SOLOMON: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. SOLOMON:

Q Good morning.

Good morning.

Q I would like to start by briefly going through your background. Did you graduate from Wharton in 2004?

I did.
Q nd did you receive a bachelor of arts in real estate and finance?
I did.
Q Do you have any postcollege formal education?
I had some licensures in the real estate business, a salesperson's license. nd at one point a gaming license in the state of Nevada, or in the state of New Jersey, sorry.
Q Thank you.
fter graduation, did you start working at Forest City Ratner?
I did.
Q nd for how long did you work there?
I worked there a little over a year.
Q Okay.
nd after you left Forest City, did you start working for The Trump Organization?
I did.
Q t some -- so this was approximately the 2006 time period?
It was.
THE COURT: Hold on. Let me just ask the witness. Good morning, by the way.
THE WITNESS: Good morning.
THE COURT: These microphones are very

temperamental. You have to speak right into them loudly. I think they probably heard everything except maybe that last answer.
THE WITNESS: Thank you.
THE COURT: Great. Please continue.
Q t some point in time did you become an executive vice president at the Trump Organization?
I did.
Q nd did you continue working for The Trump Organization until approximately January 2017?
That's correct, yes.
Q From let's say until 2011, until the time you left, what were your responsibilities at the Trump Organization?
Well, they varied and evolved as my experience grew. When I first started in the company I was just shortly out of college. I had worked as, you had mentioned, for Forest City Ratner, another developer, for a year or so, um, helping them on construction related projects, specifically a project in Yonkers.
When I joined our family business, I initially started -- probably spent most of my time under ndy Weiss, who was, then, our head of development and construction, but I moved around within the organization to cut my teeth on various elements of the business.
So over time, as I had more experience under my belt

and I -- and I proved myself within the context of the organization, I was given more responsibilities.
Q I would like to focus, though, on the period roughly 2011 until the time you left?
Okay.
Q What were your specific responsibilities in the organization?
Well, alongside my brothers, we worked on various components of the business at the Trump Organization, some of it administrative, others -- for me, specifically, I was very focused on the redevelopment of the old Post Office building on Pennsylvania venue, and Trump Doral in Florida. nd I spent an enormous amount of my time shepherding those two projects through their redevelopment. nd obviously there were license deals that were happening at the time I was at the Trump Organization and -- during the time period you reference, um, and miscellaneous other things. But the majority of my time was spent in those areas.
Q You mentioned Doral; that's the golf course down in Florida?
Correct, yes.
Q When The Trump Organization purchased Doral, was it something that is known as a transitional asset?
When we purchased Doral, it was, um, part of a collection of properties that had fallen into disrepair. The

portfolio was in bankruptcy and we purchased it out of bankruptcy. Um, it was in rather poor condition. We invested an enormous amount of money in repositioning the asset and redeveloping it, so we were transitioning it in that regard from a, um, really three-star golf resort and property to a much more elevated experience for the guests.
Q Do you know what the term "transitional asset" means in the real estate world?
Um, did he have -- I can guess what it would mean, but we were -- it was transitioning from what it was under its prior ownership owned by Marriott to what our vision was for the property.
Q I was asking more generally, not necessarily specific to Doral.
Have you heard the term transitional asset in your experience?
Yes, I have.
Q What do you understand that to be?
What I just described we did for Doral.
Q ll right.
re you familiar with G P, Generally ccepted ccounting Principles?
I'm generally familiar with G P, yes.
Q What is your understanding of G P?
You had asked me with that when we had met a little

over a year and a half ago. What I told you then is true now, that I hadn't thought about G P as much since college. So, um, it's -- my understanding is very general. I'm not an accountant, but I recall being exposed to this idea when I was in university.

Q Okay.

Other than any accounting classes you may have taken back in university, had you had experience with G P in your professional career?

You had showed me one document that referenced G P, G P principles, but no, not that I can recall beyond that.

Q Have you performed any work for The Trump Organization since 2017?

I don't believe so, no.

Q Between January 2017 and the present, did you have any financial interest in the old post office in Washington, D.C.?

Between when?

Q January 2017 and the present?

Yes.

Q Could you please describe that financial interest?

I had a profit participation in the project.

Q What do you mean by "participation in the project"?

What I just said. I had a profit participation in the project in the event of a sale, all of which was disclosed when I entered government.

THE COURT: Hold on. I think the trick may be to move the microphone closer to you, because I know you can't get that close to the table.

THE WITNESS: I'm sorry. I wonder if I could make the cord longer. Thank you.

THE COURT: nd obviously keep your voice up.

THE WITNESS: Let me know if it's better.

THE COURT: Please continue.

Q Thank you, your Honor.

Between January 2017 and present, have you had any financial interest in TTT Consulting?

TTT? Um --

MR. KISE: Objection. Relevance.

MR. SOLOMON: Payments by the defendant organization can go to show witness bias, your Honor.

THE COURT: Overruled.

Yeah, I had an interest in that consulting agreement, but I don't think that there have been any recent payments from it.

Q Do you recall any payments between January 2017 and the present as a result of your interest in TTT Consulting?

I recall that when I went into government, in consultation, at the suggestion of the Office of Government Ethics, I had to resign from many assets and entities, put others into trust, and as it pertained to that one, convert it,

um, from a variable stream of income, based on how the assets performed, to a fixed income, which I did at their suggestion.

nd, you know, that's the last I know.

Q Other than -- excuse me, between January 2017 and the present, have you received any other payment from The Trump Organization, other than what you've described with respect to the Old Post Office and TTT Consulting?

No, I don't believe so.

Q I would like to talk about the Trump Organization's relationship with Deutsche Bank. re you familiar with Deutsche Bank?

I am, yes.

Q Prior to 2011, was Deutsche Bank a lender on any of the Trump Organization's projects?

Yes. I believe that they had done the initial construction loan on Trump Chicago, that that predated my involvement of the company.

Q So that's the property, the Trump International Hotel and Towers in Chicago?

Correct, yes.

Q nd was that relationship through the Commercial Real Estate Group at Deutsche Bank?

You identified for me, um, a year ago when we met that it was.

MR. KISE: Your Honor, I just want to put on the

record, as we do with other witnesses, a standing objection to these questions that predate the statute of limitations.

THE COURT: Understand. Overruled.

Q Okay.

When we met in ugust of 2022 for your testimonial session --

Yes.

Q -- I had shown you some documents. Do you recall that?

Yes, I do.

Q Based upon those documents, did you understand that the relationship that The Trump Organization had prior to 2011 with Deutsche Bank was through the Commercial Real Estate Group?

I did, yes.

Q Okay.

nd were those loans secured by a mortgage on the underlying real property in Chicago?

I believe so, yes.

Q To your knowledge, was there any guaranty provided on those loans for the Chicago property?

I don't know.

Q re you aware of any?

I'm not sure.

Q You are not sure if you are aware of any?

No, I'm not sure if there was -- I was answering your question. I'm not sure if there was a guaranty that predated my

involvement in the company, those loans.
Q I understand. s you sit here today, do you have any knowledge about any guaranty on the Chicago loan prior to 2011?
No, I have no knowledge.
Q Did there come a time that you were introduced to someone in the Private Wealth Management Group at Deutsche Bank?
Yes.
Q Was that Rosemary Vrablic?
It was, yes.
Q Who made that introduction?
My husband, Jared.
Q When was that?
Roughly 2010 or 2011.
Q Was that during the time that the Trump Organization was seeking financing for the Doral loan?
It was, yes.
Q t that time, what benefit, if any, did you understand that the Private Wealth Management Group could provide to the Trump Organization as compared to its existing relationship with the Commercial Real Estate Group?
I don't think I ever made that comparison. I didn't have an existing relationship with the Commercial Real Estate Group, and I had heard that Rosemary was a very formidable banker with a lot of experience and a great person to have a relationship with, and I was excited to show her an opportunity

that we were very passionate about, um, to explore working together on the project.
Q Did you understand that the Private Wealth Management Group could provide different loan terms than the Commercial Real Estate Group?
I don't know that I thought about that. This was the first time I had been introduced with Rosemary so, I showed her the project. I didn't make assumptions about what her terms would be, but when she sent us her proposal we obviously decided to proceed with her moving forward.
Q Do you recall if her proposal was any different than any proposal you had received from the Commercial Real Estate Group?
I'm not sure that we did receive a proposal from the Commercial Real Estate Group. You showed me a document, roughly a year and a half ago, that showed a proposal that I don't know if it was ever actually sent to us at the company. I was not familiar with it.
Q Okay.
Let's talk about Doral specifically. You mentioned about the bankruptcy. So let's go through that, if we can, just briefly.
Sure.
Q Did there come a time that the Trump Organization was selected as the stalking horse bidder for the Doral property?

Yes.
Q Could you explain what a "stalking horse bidder" is?
We were afforded the opportunity, within a finite time period, to put forth a bid for the property. The portfolio, I believe it was four other assets, including Doral, five, was going through a restructuring, and part of the plan of reorganization was to sell one of the assets and create some liquidity for, I guess, the portfolio.
So I got a call under -- I believe it was the ninth month of pregnancy with my now oldest child, my daughter rabella, so over 12 years ago saying that we had an opportunity to be the stalking horse bidder if we could move quickly.
Q Okay.
fter that selection, did you, on behalf of the Trump Organization, attempt to obtain financing for the potential purchase of Doral?
Yes, we did.
Q Was it The Trump Organization's intention, at that time, to renovate Doral if they were successful in obtaining financing?
Well, I think it was or intention, regardless, to renovate Doral. t one point we had explored doing the project with just available cash on hand at the company rather than have any financing, but the reason we bought the property was because we believed in its potential to be something better than it was

under current ownership. Um, and to rebrand it, to reflag it. It was currently being run by Marriott under a management contract.
We took over the management of the hotel operations, and our goal was to reposition it as a luxury golf resort in south Florida.
Q In connection with potential financing, did you contact ndy Beal of Beal Bank?
Yes, I recall that.
MR. SOLOMON: If I could hand up PX-1266.
(Whereupon, the exhibit was displayed on the screen.)
(The exhibit was handed to the witness.)
Thank you.
Q You've been handed, and also up on the screen, is what's been marked as PX-1266 for identification. If you look at the bottom e-mail that's from you to ndy Beal. Do you see that?
Yes, I do.
Q nd further up the chain you forward it to Mr. Weisselberg, Mr. Glick, Mr. Orowitz, and Mr. Greenblatt. Do you see that?
I do, yes.
Q Do you recognize this e-mail?
I recall you having showed it to me a year ago, yes.

MR. SOLOMON: We offer PX-1266 in evidence.
MR. KISE: Objection.
MR. ROBERT: Objection. Statute of limitations.
THE COURT: Overruled. It's in.
Q If you look at the last sentence in the first paragraph of your e-mail, "My father will also send you his most recent financial statement by hard mail." Do you see that?
I do, yes.
Q Was that a request made by Mr. Beal for the financial statement, or were you volunteering it?
I have no recollection of this e-mail beyond you having showed it to me last year, so I'm not sure.
Q Putting to one side the e-mail, do you recall that Mr. Beal actually requested a copy of Donald Trump's financial statement, or did you volunteer it?
I don't recall.
Q Do you recall that Beal Bank, in connection with any potential financing, had wanted an equity interest in Doral?
I don't remember that, no. I recall -- and these were very brief conversations. We never reached a term sheet stage. We just generally showed them the opportunity, but I think as we discussed last year, two names that came to mind; one was Beal Bank. nd we knew ndy Beal quite well. nd another was Inbursa. My recollection is Inbursa had suggested being a partner with us in Doral, not Beal Bank, but I may be mistaken.

There may have been -- it may have been the opposite way.
Q Let's leave Inbursa off to the side for a moment --
Sure.
Q -- and stay focused on Beal Bank.
re you aware of any relation -- any relationship between Beal Bank and CSG Investments?
CSG Investments? Um, that -- that acronym sounds familiar, but I don't recall what it is.
Q Let me show you a document it's already in evidence, so I have a copy to hand up to the witness, PX-3232?
(Whereupon, the exhibit was displayed on the screen.)
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
Q nd this is an e-mail from Steve Harvey, to you, dated November 15th, 2011.
Mm-hmm.
Q Did you receive this e-mail in or about November of 2011?
I don't recall this e-mail, no.
Q Do you have any reason to believe you did not receive it?
No, I don't.
MR. SOLOMON: We offer it in evidence, your Honor.
MR. KISE: Objection.

MR. SOLOMON: I'm sorry, it's already in evidence.
MR. KISE: I think it's already in evidence, but I just want to note, as we are going down this path, relevance again.
None of this relates to any of the claims actually at issue. There are no loans prior to 2014 that are the subject matter. This is a non-party witness. I'm not sure of the purpose of going through all of these.
What is going to be, I'm sure, a series of documents between 2011 and 2014 that predates the statute of limitations, it can't possibly have any bearing on any claim actually at issue.
THE COURT: I disagree. It remains in evidence.
MR. SOLOMON: Thank you, your Honor.
Q If you take a look at Mr. Harvey's cover e-mail, he states that it is a redraft of the term sheet based on our conversation today. Do you see that?
I do, yes.
Q Do you have any reason to doubt that you had a conversation with him on or about November 15th, 2011?
No, I don't.
Q If you look at the second page of this exhibit.
(Whereupon, the exhibit was displayed on the screen.)
Q The interest rate is LIBOR plus 5.5 percent. Do you

see that?
I do, yes.
Q Do you recall if that was the rate you had discussed with Mr. Harvey?
No, I don't recall.
Q Do you have any reason to believe this term sheet does not accurately reflect your conversation with Mr. Harvey?
Well, I don't recall my conversation with Mr. Harvey, so I don't know one way or the other. I have no reason to believe it doesn't reflect it.
Q Okay.
MR. SOLOMON: I'm going to hand to the witness PX-3247, which is already in evidence.
(Whereupon, the exhibit was displayed on the screen.)
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
Q This is an e-mail chain between you and Ronnie Levine and Ralph Herzka. Do you see that?
No. I think --
Q I think I may have a different exhibit.
MR. SOLOMON: I'm on the wrong one.
Q You have the right one, ma'am. This is an e-mail between you, at the bottom, and Enrique E. Morelos Zaragoza Borbolla. I apologize if I mangled the pronunciation.

Is this the potential transaction you were discussing with Inbursa?
Yes. This is with Inbursa.
Q If you look at the bottom of the first page, second paragraph, " ttached for your review is a markup of your term sheet."
Do you see that?
I do, yes.
Q nd if you turn, beginning on the third page --
(Whereupon, the exhibit was displayed on the screen.)
Q -- there appears to be a markup of an Inbursa term sheet?
Yes.
Q Is that your markup of his term sheet as reflected in the cover e-mail?
I don't recall, sitting here today, any of these terms from 2011. We didn't move forward with the deal with them, so I have no reason to believe it's not. But I don't remember having these conversations other than very high level.
Q If you look on the third page of the exhibit, which is the first page of the term sheet, "Indicative Rates, one month LIBOR plus 550 basis points."
Do you see that?
Which page were you on?

Q The third page of the exhibit, page three of 14?
Okay.
Q Under "Indicative Rates."
Yes.
Q It's highlighted on the screen. That is something I did not strike; correct?
It's not struck here, no.
THE COURT: Let me just suggest. It's often easier to see it on the screen because they highlight what they want you to look at.
THE WITNESS: Thank you. I appreciate it.
THE COURT: But either way. What were you -- nothing. Go ahead.
Q t this time, were you also communicating with Meridian Capital as a potential broker for the financing of the Doral acquisition?
I recall you having asked me about Meridian when we met, and I had forgotten that we had conversations with them. I don't believe we had ever engaged them. I don't recall having done that. But it wasn't uncommon for us to ask people in the market what their thoughts were as we were looking at things. But I don't recall that we actually formerly engaged them.
Q But you had conversations with them; correct?
Yeah, you reminded me of that, yes.
Q Okay.

MR. SOLOMON: If we could hand to the witness PX-3243 which is already in evidence.
(Whereupon, the exhibit was displayed on the screen.)
(The exhibit was handed to the witness.)
Q nd I was on the wrong page earlier, now on the right page. This is an e-mail chain between you and Ronnie Levine and Ralph Herzka; do you see that?
I do, yeah.
Q They were with Meridian Capital or were with Meridian Capital at that time; correct?
I hadn't remembered Ronnie Levine, but you had reminded me that he worked at Meridian. Ralph I remember.
Q Do you see the first sentence in your e-mail on the very top from November 1st, 2011? You state, "I actually spoke to Tom Harrison at Colony today." nd then it goes on. Do you see that?
I do, yes.
Q Do you recall speaking with anyone at Colony in potential financing for Doral?
There was a point in time when Colony was going to be our equity partner in the project, not on the debt side, but as our partner in -- actually, you know what, that was OPO, so this was -- I don't recall, because there was also Tom Harrison, but I don't recall having spoken to him about Doral. But I do

recall having spoken to him about the Old Post Office, and we actually had explored it collectively for some time, so. They were happening kind of around the same time, so apologies for the confusion. But no, I didn't remember speaking to him about Doral.
Q Okay.
Second sentence reads, "He said that we wouldn't want to do a deal with them on the debt side as they are too expensive for what we'd be looking for (low teens.)"
Mm-hmm.
Q Do you have any reason to believe that you reported the conversation inaccurately to Mr. Levine and Mr. Herzka?
No.
MR. SOLOMON: I'm going to hand up PX-1289, which is not in evidence, so it's marked for identification.
(Whereupon, the exhibit was displayed on the screen.)
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
(Continued on the next page.)

Q This is an e-mail from Ronny Levine to you; do you see that?
I do, yes.
Q November 7, 2011, correct?
That's what it says, yes.
Q nd it attaches a finance memo that, according to this e-mail, you discussed with him last week?
It appears that way, yes.
MR. SOLOMON: Your Honor, we offer PX 1829 in evidence.
MR. KISE: Objection, statute of limitations, relevance. Is this going to be connected up at some point to claims that are at issue?
THE COURT: We have been battling, shall I say, over relevance in terms of the statute of limitations, for example. First of all, this is not going to be a comprehensive list:
There is no jury, so there is no prejudice.
This apparently will be the plaintiff's last witness on their case-in-chief, right?
MR. SOLOMON: I believe that to be true, Your Honor, but depending on what happens, we reserve the right.
THE COURT: Of course.
nd these documents, these discussions, I would

just like to get the whole picture, not just blind myself.
I am very aware of the ppellate Division's statute of limitations cutoff.
nd finally, I think that a lot of this is arguably, possibly, relevant to the injunctive relief that the plaintiff is requesting.
So that's my response to both relevance and statute of limitations. So overruled.
That was a request to put this in evidence.
MR. SOLOMON: Yes, Your Honor.
THE COURT: I almost forgot after all of the talking I did.
Granted, it is in evidence.
(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1829 by the Court.)
Q If you could turn to the financing memo?
Yes.
Q Mr. Levine starts by telling you that they have spoken with a wide variety of lenders regarding acquisition and renovation, financing for the Doral Resort and Spa; do you see that?
I do, yes.
Q t the end of the first paragraph he goes on to analyze certain information from a recent Deutsche Bank

securitization; do you see that?
I do, yes.
Q nd on the next page, based upon the information they have, towards the end of the carry-over paragraph, he notes that a 9 percent debt yield is "an aggressive assumption and the lowest indicated of the deals above." Do you see that?
I do, yes.
Q Do you recall in or about November of 2011 having an understanding that a 9 percent debt yield is an aggressive assumption with respect to potential Doral financing?
No.
Q Do you have any reason to doubt, as stated by Mr. Levine, that a 9 percent debt yield was an aggressive assumption at that time?
I think it would be hard for me to answer that question sitting here today, all of these many years removed. But just looking at the document, it appears that the example he is using is a mezzanine position. This was debt not mezz, so I am not sure if it is -- this is an apples to apple comparison. But it says what it says. I don't remember it and I don't believe we used them to secure financing.
Q I understand you didn't use them to secure financing. Let's go back though. It is the second paragraph on the first page that speaks about mezz financing, correct?
The 92 million mezzanine position on the standard

hotel, yes.
Q Which was sold for 80 cents on the dollar, correct?
That's what it says here, yes.
Q Is it your understanding that the securitized portion that is reflected in the chart above was also mezzanine financing?
I don't have an understanding beyond what I am seeing here today.
Q Well, you testified that the 9 percent debt yield related to mezz financing, and I am trying to understand where you drew that from?
I am just reading the document realtime, so I told you that I hadn't recalled seeing it prior.
Q So you don't know then if the securitized portion that is reflected in the chart on the first page is debt or mezzanine financing, do you?
No, I don't.
Q Did there come a time that you and Donald Trump spoke with Richard Byrne, the CEO of Deutsche Bank Securities, about potentially providing a loan to purchase and renovate Doral?
I recall you reminding me of that discussion, but I -- I didn't recall it prior.
Q Do you recall it now?
No. I recall you showed me, I think, a letter from my father to Mr. Byrne. I don't know. You just showed me a

document the last time we were together.
Q I am going to show you what has been marked and already entered into evidence as PX 1433.
Thank you.
(Handing)
Q Is that the letter you were referring to, ma'am?
Yes, I believe I was copied on it.
Q Okay. If you look at the first sentence there is a reference to Donald J. Trump's recently completed financial statement. Do you see that?
I do, yes.
Q nd you are cced on this letter, right?
I see that, yes.
Q ny reason to believe you did not receive this in or about November -- on or about November 15, 2011?
No.
MR. SOLOMON: I am going to ask to mark as PX 1067 for identification.
(Handing)
THE WITNESS: Thank you.
Q This is an e-mail from you to Richard Byrne the next day, November 16, 2011; do you see that?
I do, yes.
Q Does that refresh your recollection that you had conversations with Mr. Byrne about potentially financing Doral?

I remembered it when you brought it to my attention. But I think they were very high level discussions and the conversations didn't go anywhere. So, I don't remember the details of it now.
Q Okay. But you did send this e-mail to Mr. Byrne on or about November 16, 2011, correct?
It appears that way, yes.
MR. SOLOMON: We offer this in evidence.
MR. KISE: Objection, statute of limitations and relevance.
THE COURT: Overruled on both grounds. Now I understand, particularly from Mr. Robert, that you feel that you have to object every time there is a document introduced --
MR. KISE: We do.
THE COURT: -- on statute of limitations ground. lso on relevance?
MR. KISE: Since I am going to talk about statute of limitations, I might as well just mention relevance while we are at it.
I hope that the Court when we start our case though, I will say this, next week, offers us this extraordinary latitude in the introduction of evidence. I want to put that on the record. Because this is, respectfully, an extraordinary latitude on bringing in

things from years ago.
THE COURT: What is our favorite saying: Sauce for the goose is sauce for the gander?
Okay.
Q Do you recall that before you were dealing with Rosemary Vrablic at Deutsche Bank that the commercial real estate group had proposed certain terms for the financing of the purchase of Doral?
I didn't recall that proposal, no.
MR. SOLOMON: I am going to mark as PX 369 for identification.
(Handing)
THE WITNESS: Thank you.
Q This is a Deutsche Bank document from November 21, 2011. If you look at page five, there is a summary of indicative terms; do you see that?
Okay.
Q It identifies the borrowers; do you see that?
I do, yes.
Q Guaranties. The guaranties will be by the company and each of its direct and indirect subsidiaries; do you see that?
I do.
Q There is no personal guaranty indicated there, is there?

I don't see one.
Q If you look at "facility," do you understand facility to be the loan?
I do, yes.
Q The amount, loan amount is 130 million correct?
I see that.
Q nd the spread is L plus 800 bps; do you understand that to be LIBOR plus 800 basis points?
I do.
Q Does this refresh your recollection that the commercial real estate group initially proposed terms that were substantially different from those that were eventually accepted by the Trump Organization through the private wealth management group?
No, I don't, I don't recall having seen this.
Q I understand you don't recall having seen this. My question was a little bit different. Does this refresh your recollection that the commercial real estate group had proposed terms that were different than those ultimately agreed to by the Trump Organization through the private wealth management group?
No.
MR. SOLOMON: I am going to ask to mark PX 315 for identification.
(Handing)

THE WITNESS: Thank you.
Q This is a cover e-mail from you to Rosemary Vrablic and Dominic Scalzi with a cc to Jared Kushner, December 6, 2011. Do you see that?
I do, yes.
Q nd it attaches what you described as: Our investment memo, as well as basic information on our golf and hotel portfolios. Do you see that?
I do, yes.
Q Did you send this to Ms. Vrablic and Mr. Scalzi on or about December 6, 2011?
I don't recall it, but I have no reason to believe I didn't.
MR. SOLOMON: We offer this in evidence, Your Honor.
MR. KISE: Objection, statute of limitations and relevance.
THE COURT: Overruled.
Q This e-mails refers to a meeting the next day involving you, Ms. Vrablic and Donald Trump; do you see that?
I do, yes.
Q Did you, in fact, meet with Ms. Vrablic and Mr. Scalzi the next day?
I don't recall this particular meeting, but over the years I did meet with both Rosemary and Dominic periodically.

Q But you have no specific recollection of meeting to discuss the investment memo or the basic information on your golf and hotel portfolios?
Not that specific meeting, but I recall more generally us meeting to discuss, whether it was in-person or telephonically, Doral.
Q Did there come a time that Ms. Vrablic provided a summary of potential loan terms for the Doral loan?
Can you repeat the question?
Q Sure.
Did there come a time when --
MR. SOLOMON: Your Honor, may I have a read back?
THE COURT: Read back, please.
(Whereupon, the record was read back by the court reporter.)
Yes.
MR. SOLOMON: I am going to ask to mark for identification PX 319.
(Handing)
THE WITNESS: Thank you.
Q PX 319 is an e-mail from Ms. Vrablic to you: Ivanka, as we discussed, please find attached our summary terms for the proposed acquisition for the Doral resort. Do you see that?
I do, yes.

Q Did you receive this on or about December 15, 2011?
I recall right around that time having received high level terms. But I don't recall this particular -- this particular note and e-mail. But around that time we would have received -- we would have received what their proposal was, yes.
MR. SOLOMON: Your Honor, we offer this in evidence.
MR. KISE: Objection, statute of limitations, relevance and the attachments are hearsay. For what purpose is that page being offered; it is purely hearsay?
THE COURT: Is it more than just the first page?
MS. H BB : The document we have is three pages, Your Honor.
THE COURT: re you asking to introduce more than the page that is on the screen here?
MR. SOLOMON: Yes, the entire exhibit, Your Honor.
THE COURT: nd what is the relevance of the second and third page?
MR. SOLOMON: The relevance are the terms that were proposed by Deutsche Bank in connection with the potential loan on Doral.
MR. KISE: The document itself is hearsay. Is he proposing notice as the exception that it comes in?

THE COURT: I assume notice.
MR. SOLOMON: Notice and the witness's understanding of what the potential terms were with respect to the proposal from Deutsche Bank.
MR. KISE: But not for the fact of the terms themselves. This witness hasn't done anything to identify that these, in fact, were the terms that were received.
MR. SOLOMON: With respect, the witness said she received term sheets from Deutsche Bank, this is one of the term sheets. nd she stated she has reason to believe that she did not receive this particular one.
THE COURT: lso it is questionable or problematic whether an offer is being introduced to prove the truth of its contents. But anyway, it is in at least for notice.
(Whereupon, the document referred to was marked for evidence as Plaintiff's Exhibit 319 by the Court.)
THE COURT: That's not necessarily the only reason. But if you want to push, go ahead.
Q Do you see on the page two of three there is pricing, renovation period: LIBOR plus 2.25 percent over prime. nd then during the amortization period: LIBOR plus 2 percent or the prime rate minus .25 percent. Do you see that?
I see that, yes.

Q Do you recall that Deutsche Bank had proposed different interest rates for the renovation period and the amortization period?
I do, yes.
Q Do you have an understanding as to why those pricings are different during the two periods?
Well, I believe that once we had invested a tremendous amount of capital into the asset, the pricing adjusted accordingly. I don't believe that this is the financial proposal though.
Q I did not represent that it was.
Because these terms are not consistent with my recollection.
Q But there was a negotiation back and forth with Deutsche Bank prior to signing loan agreements, correct?
There was, yes.
Q Okay. Do you see there was a guarantor identified here? Donald J. Trump?
I see that, yes.
Q Do you see that the guaranty is described on this sheet as a full and unconditional guaranty of (i) principal and interest due under the facility; and (ii) operating expenses of the resort? Do you see that?
I do, yes.
Q Did you understand that at some point during the

negotiations Deutsche Bank had wanted a guaranty from Donald J. Trump of the principal and interest and operating expenses?
Yes.
Q If you look under covenants, and I direct your attention to the bottom (ii), at the very bottom: Guarantor shall maintain a minimum net worth of 3 billion including any value related to the guarantor's brand value. Do you see that?
I see that, yes.
Q Okay. Do you recall in the negotiations between the Trump Organization and Deutsche Bank discussions about a minimum net worth requirement for the guarantor?
No, I don't. You had mentioned this to me. I think you had shown me one of the term sheets, I am not sure this one, but one of the term sheets that had circulated when we last met and identified that for me. But I didn't independently recall it.
Q nd this doesn't refresh your recollection that a minimum net worth requirement for the guarantor was one of the terms proposed by Deutsche Bank?
No, it doesn't.
Q You thought this was a great proposal, didn't you?
I don't recall this proposal.
MR. SOLOMON: I am going to ask to mark PX 1251 for identification.
(Handing)

Q Keeping in mind, PX 319 was sent to you on December 15, 2011 at 11:13 a.m., in looking at this exhibit, PX1251, the second page, which is the first e-mail, is a copy of that e-mail from Ms. Vrablic, correct?
If you stipulate that it is.
Q I am asking you, same date and time?
It appears to be, yes.
Q Yes. nd you forward that e-mail on, including the term sheet, to Mr. Weisselberg, Mr. Greenblatt and Mr. Orowitz; do you see that?
I see that, yes.
Q nd you state: "It doesn't get better than this. Let's discuss S P."
Do you see that?
I do, yes.
Q Does that refresh your recollection that you thought that was a good proposal for the Trump Organization?
No.
Q Do you have any reason to believe you did not write that on or about December 15, 2011?
No.
MR. SOLOMON: Your Honor, we offer this in evidence.
MS. H BB : I am going to state an objection on the record on this. If you actually look at the e-mail,

it was never sent. Jason Greenblatt there is no "to."
MR. SOLOMON: The bottom of the first page, Ivanka Trump, and then carries over to llen Weisselberg, Jason Greenblatt and David Orowitz.
MS. H BB : Do you see the top of the first page, at least on the exhibit I have, there is no "to."
MR. KISE: Your Honor, also in addition to my initial statute and limitations and relevance objections, I don't think the witness has testified about the top portion.
MS. H BB : That's what I am saying.
MR. KISE: I think that's what Ms. Habba is referencing. Lower portions perhaps, but the top portion here I don't think there is any testimony about that or whether she, in fact, received that at all.
The lower portions that have her in the "to" or "from" category, I believe that's where she is testifying. Mr. Solomon, I am sure, can clear that up. But the top portion is not. That would be something --
MR. SOLOMON: Your Honor, I will note --
MR. KISE: -- I don't know what that is.
THE COURT: But he is asking about the bottom portion.
MR. SOLOMON: Your Honor, I will note this was produced to us by the Trump Organization. So it is a

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Trump Organization document. It is an admission against interest. It comes in on many grounds.

MS. H BB : With all due respect, your questions to the witness are whether it was sent and whether those were sentiments. It was not sent.

nd I would just say, Your Honor, this will go a lot faster and I don't think we will have as many objections if they could cut their exhibits into the portions that they would like to show, as opposed to a string of e-mails, some of which were never even sent to anybody. That's going to be my standing objection on this. I just think that is what the issue is.

MR. SOLOMON: Notwithstanding your suggestion, we are not going to alter documents before presenting them to the Court. We are going to present them as they were produced to us.

MS. H BB : Then you should ask --

MR. SOLOMON: Please let me finish, ma'am. I didn't interrupt you.

THE COURT: Mr. Solomon, then Ms. Habba, and then let's get back to the witness.

MR. SOLOMON: Very simply, Your Honor, we can exclude the top portion. Ms. Habba keeps saying it wasn't sent, it wasn't sent, the one I am asking about, the one from Ivanka Trump was, in fact, sent.

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The one from Jason Greenblatt, right above that at 11:54 a.m. does in fact indicate "to" Ivanka Trump, David Weisselberg, David Orowitz, confirming that it was sent and received. Ms. Trump responds ten minutes later at 12:04 p.m., so they were, in fact, sent. The document itself provides evidence that it was sent, received reviewed and commented upon.

THE COURT: Can we eliminate the first?

MR. SOLOMON: We would do that, yes, Your Honor. We would agree to remove the top portion for the present time with respect to Mr. Greenblatt, reserving our rights with respect to dealing with that at a later time.

THE COURT: ll right. Mr. Kise's underlying objection is overruled. nd everything is in except the first section, which may or may not have been sent, I don't know.

MR. KISE: I am not sure, just to clarify, because our understanding is this is their last witness, as you said, I am not sure what later time they are planning on doing that. When their case closes?

MR. W LL CE: Your Honor, sorry to interrupt Mr. Solomon. This is their document. This has been used in testimony. This now -- we will go to the metadata, but this is their document. To stand up and say it looks funny, so I don't think it was sent is -- is a new

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creation from defendants. But we will go back and look at the metadata.

MS. H BB : Nobody said that. I am being very clear and we all have to make the record clear. When you show a witness a document and say, "was this sent." It was not sent. nd I think you probably didn't realize that until now, which is fine. So let's just take that portion out that was not sent. That was not -- yes, it was produced, but it is irrelevant. That's not what you asked the witness about. So just I think that streamlines, Your Honor, so we don't have do this all day.

MR. SOLOMON: I asked the witness about the portion she sent, received and commented on.

MR. KISE: I think we are all in agreement, so we will just move on.

THE COURT: The record is clear. Let's move on.

Q So let's go back and reset if we can.
Okay.

Q Your response or your reaction to the proposal on December 15 at 11:50 a.m. that you sent to lan Weisselberg, Jason Greenblatt and David Orowitz is: "It doesn't get better than this." Do you see that?
I do, yes.

Q Does that refresh your recollection that you thought this was a good proposal for the Trump Organization?

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Well, we ended up doing the deal with Deutsche Bank, so.

THE COURT: That's a yes or no question.
THE WITNESS: Oh.

Not this particular proposal, because I think what we ended up doing was slightly different. s I stated earlier, I didn't remember this particular document. But yes, I thought generally the deal terms with Deutsche Bank for Doral were positive and we proceeded forward.

Q Okay.

THE COURT: That could have been a simple "yes."

Q You see that Mr. Greenblatt responds to you only four minutes later?
Okay.

Q Do you see that at 11:54 a.m. he wastes no time in telling you: "I will review, but not immediately, that this is a full principal and interest and operating expense personal DJT guaranty."
Is that a typo? But "note" as opposed to but "not;" is that your understanding?
It is what it says.

Q Okay. Then it goes on, "Is DJT willing to do that? lso, the net worth covenants and DJT indebtedness limitation -- limitations would seem to me to be a problem." Do you see that?

I do, yes.
Q When you received this, did you have an understanding as to why the net worth covenant would be a problem?
I don't remember having received this.
Q Do you recall the net worth covenant was 3 billion?
No, I think I said earlier that I didn't recall that there was a net worth.
Q In the term sheet that you forwarded on?
Yes.
Q The net worth covenant was 3 billion?
Yes. nd what is here I see that it says 3 billion, or in the earlier exhibit.
MR. SOLOMON: Could we show on the screen PX-787?
Q nd that is Donald J. Trump's June 30, 2011 Statement of Financial Condition. Do you see that?
I do, yes.
MR. SOLOMON: Can we go to page five of the document?
Q Liabilities and net worth.
MR. SOLOMON: If you scroll down.
Q Net worth. $4,261,590,000. Do you see that?
I see that is what it says, yes.
Q Were you aware that in his Statement of Financial Condition as of June 30, 2011, Donald Trump had represented

that his net worth was more than 4 billion?
No.
Q Let's turn back to PX-1251.
You respond to Mr. Greenblatt: "That we have known from day one. We wanted to get a great rate and the only way to get proceeds/term and principal where we want them is guarantee the deal." Do you see that?
I do.
Q Do you recall writing that?
No, I don't.
Q On or about December 15, 2011?
No.
Q Do you have any reason to believe that is not an accurate statement of your view at that time?
No, I don't.
Q Did there come a time that you responded to Deutsche Bank and proposed different terms?
s I said earlier, I don't believe this was the final deal we did. I think the rate was slightly different. So, there must have been subsequent discussions.
Q Okay.
MR. SOLOMON: I am going to hand up PX-332 which is already in evidence.
(Handing)
THE WITNESS: Thank you.

Q This is an e-mail from you to Ms. Vrablic and Mr. Scalzi with a copy to Mr. Weisselberg and Mr. Orowitz: "Greetings from Florida. ttached is a clean version of our marked up LOI." Do you see that?
Yes, if you don't mind just giving me a moment to read it?
Q Please.
Thank you.
(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

Okay. Thank you.
Q Do you see that the first paragraph states, " ttached is a clean version of our marked up LOI"?
Yes, I do see that.
Q Is LOI short for letter of intent?
It is.
Q If you look at the third page of the exhibit.
(Whereupon, the exhibit was displayed on the screen.)
Q The very bottom, "Guarantor shall maintain a minimum net worth of 2 billion, excluding any value related to the guarantor's brand value, as reflected in the Statement of Financial Condition."
Do you see that?
I do, yes.
Q So at this time, although Mr. Trump's prior Statement of Financial Condition represented a purported net worth of more than $4 million, you rejected a net worth covenant of 3 billion and proposed a covenant of only 2 billion; correct?
Well, it says what it says here in the term sheet. I didn't, um --
Q Well, the other term sheet we saw this had they 3 billion?
Yes.
Q Your proposal rejects that an counteroffers 2 billion;

correct?
It appears so, yes.
Q Did The Trump Organization ultimately enter into commitment committing and fee letters with Deutsche Bank for the Doral loan?
It did, yes.
MR. SOLOMON: I'm going to mark as PX-320 for identification.
(Plaintiff's Exhibit 320 was deemed marked for identification.)
(The exhibit was handed to the witness.)
(Whereupon, the exhibit was displayed on the screen.)
THE WITNESS: Thank you.
Q Tom Sullivan is at Deutsche Bank; correct. Or was in or about January of 2012; correct?
I don't really remember Tom, but.
Q Okay.
Did you receive this e-mail in or about January of 2012 from Deutsche Bank attaching fully executed Commitment and Fee Letters?
I don't recall this particular e-mail, but I see it right here, so.
Q Do you have any reason to believe you did not receive this?

No, I don't.
Q If you turn to page four of the exhibit --
(Whereupon, the exhibit displayed on the screen was scrolled through.)
Q -- do you recognize Donald J. Trump's signature?
I do, yes.
Q If you turn to page nine of the exhibit --
(Whereupon, the exhibit was displayed on the screen.)
Q -- do you recognize Donald J. Trump's signature?
I believe so, yes.
MR. SOLOMON: Your Honor, we offer this in evidence.
MR. KISE: Objection. Statute of limitations, relevance, and one other thing, your Honor. This witness has been subpoenaed here on behalf of, I believe, three corporate entities, so I just want to note a standing objection, as well, that none of this has anything to do with those three corporate entities.
THE COURT: I don't think that matters.
MR. KISE: It does, because that is ostensibly, ostensibly the basis upon which this non-party non-resident witness was summoned here to testify. That's the reason that she was summoned here to testify. That's the reason we dragged her from her home here to testify.

So we are not asking her about things that are within the parameters of those entities. The argument from the ttorney General was we must have her here because only she can speak for those corporate entities, and so we haven't had any questions about those corporate entities, or even about the OPO loan which, maybe theoretically, or arguably, would have something to do with one of those three entities. None of this has to do with any of that.
So it's just a standing objection. That's all, your Honor.
THE COURT: Well it's an interesting question. To what extent the questioning has to be limited to the grounds of the subpoena. They would have to list every single thing that they might want to ask. lso, the law is entitled to every person's evidence.
Mr. Robert, what is your opinion on that interesting question?
MR. ROBERT: They clearly are limited to the corporate representative of those three entities. We had a whole debate two weeks ago as to they didn't have the ability to serve a personal subpoena, so they did it under the guise of these corporate entities.
So so far -- typically you would actually have the topic attached to it, which they didn't. So so far in the last hour, none of these questions come even close to the

basis of those three subpoenas.
THE COURT: Plaintiff, would you like to respond?
MR. SOLOMON: We would disagree, your Honor. The witness is -- obviously. The witness is here. She could testify about these transactions she was involved in. She is receiving e-mails. She is sending e-mails. She is commenting upon term sheets. She is negotiating the deal from top to bottom, from interest rates to amounts of a net worth covenant, which is one of the critical issues in this case, as your Honor knows and already ruled upon.
MS. H BB : Your Honor, briefly --
MR. KISE: Your Honor, none of that has anything to do with those corporate entities.
THE COURT: nd you see that point.
MS. H BB : She is no longer a defendant in this case, so you cannot take full range just because she's here.
MR. W LL CE: I'm not aware of that.
THE COURT: You know, the subpoena -- the ruling on enforcing the subpoena was minimum, not a maximum. So, anyway, overruled.
Let's continue.
MR. SOLOMON: Your Honor, we had offered this in evidence. I don't know if there was a ruling.
THE COURT: There wasn't. Granted.
(Plaintiff's Exhibit 320 was deemed marked and

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admitted in evidence.)
Q If you could turn to page 15 of 26.
(Whereupon, the exhibit was displayed on the screen.)
Would you like me to read the whole document, or just turn to the page?
Q If you need to read anything to answer my question, feel free to, but I will focus you on specific areas.
Okay.
Q I'm just going to ask if what was agreed upon under "Covenants", beginning on the bottom of page 15, carrying you over to 16. You'll see there is a bullet point that says "Guarantor shall maintain minimum net worth of 2.5 billion, excluding the value related to the guarantor's brand value (as such minimum net worth is reflected in the guarantor's Statement of Financial Condition prepared by guarantor in substantially the form prepared by guarantor as of June 30, 2011, a copy of which has been delivered to lender.)"
Do you see that?
I see that, yes.
Q Does that your refresh your recollection that the final net worth covenant was 2.5 billion?
No. s I said before, I didn't recall a net worth covenant.
Q Did there come a time in 2016 that The Trump

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Organization sought to increase the loan on Doral through Deutsche Bank?
There may have been, but I don't specifically recall that. You may have mentioned something to that effect to me when we were together last, but --
MR. SOLOMON: I'm going to ask to mark as PX-352 for identification.
(Plaintiff's Exhibit 352 was deemed marked for identification.)
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
(Whereupon, the exhibit was displayed on the screen.)
THE COURT: While we have a moment, I'm trying to remember back to first year civil procedure. Basically, I think that the three corporations were necessary for the power to bring her here. I don't think that limited the testimony. nd that's my ruling anyway.
MR. KISE: gain, for the record, I would respectfully disagree, because all the corporate subpoenas are limited in scope to particular testimony when you bring in a corporate representative.
This isn't a question of whether or not there is sufficient minimum context jurisdiction to add someone as a party to the case. That's an entirely and extraordinarily

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different analysis.
MR. SOLOMON: We are not talking about adding Ms. Trump to the case, your Honor. That's not the standard that applies in this context.
Q Ms. Trump, PX-352 had been put in front of you. You see this is an e-mail from Ms. Vrablic to you, February 11, 2016, subject "Doral. Hi, it was great speaking to you today. I spoke to the credit team on the $50 million request, and we are thrilled to consider it for you."
Does that refresh your recollection that you sought, on behalf of The Trump Organization, to increase the loan with Doral by $50 million in 2016?
No.
Q ny reason to believe that this is inaccurate?
I just don't recall this.
Q Is that a no?
That's a no.
Q Okay.
MR. SOLOMON: Your Honor, we offer PX-352.
MR. KISE: Objection. Statute of limitations, relevance and hearsay.
THE COURT: Overruled.
(Plaintiff's Exhibit 352 was deemed marked and admitted in evidence.)
Q Did you also explore, in 2016, the possibility of an

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unsecured loan for Donald Trump from Deutsche Bank?
I don't recall.
MR. SOLOMON: I'm going to ask to mark as PX-355 for identification.
(Whereupon, Plaintiff's Exhibit 355 was deemed marked for identification.)
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
Q For the record, this is an e-mail from Ms. Vrablic to you from February 16, 2016. Did you receive this on or about February 16, 2016?
Sorry. Just give me a moment to read it so I could have some context.
(Whereupon, there is a brief pause in the testimony.)
Okay. Thank you.
MR. SOLOMON: May I ask for a read back of my question, your Honor.
THE COURT: Can we have a read back of the last question.
Q Does this refresh your recollection that you were seeking an unsecured loan on behalf of Donald Trump in or about February of 2016?
No.
Q Do you recall receiving this e-mail, the top one, from

Ms. Vrablic, on or about February 16, 2016?
No, I don't recall.
Q If you turn to the second page, the very top, it's an e-mail from you to Ms. Vrablic. "Thank you, Rosemary. Just to be clear, based on the note from Dave Williams below, an unsecured facility would not require an appraisal."
Do you see that?
I do see that.
Q Does that refresh your recollection that you were seeking an unsecured loan on behalf of Donald Trump in or about February of 2016?
No.
Q Do you have any reason to believe that you did not send and receive these e-mails on PX-355?
No.
MR. SOLOMON: Your Honor, we offer it in evidence.
MR. KISE: Objection. Relevance.
I think we are passed the statute of limitations, so we'll give you that one.
THE COURT: I'll take what I can get. Overruled.
(Plaintiff's Exhibit 355 was deemed marked and admitted in evidence.)
Q Do you recall, if you don't necessarily recall the discussions relating to the amount of either the secured or unsecured facility here, questions raised by Deutsche Bank as to

the purpose or use of the proceeds of any potential loan in 2016?
No, I don't. I don't think this transpired, so I have no recollection of this discussion or this e-mail.
Q Okay.
nd do you recall that it did not transpire because Deutsche Bank refused to do this transaction?
No.
MR. SOLOMON: Mark as PX-558 for identification.
(Plaintiff's Exhibit 558 was deemed marked for identification.)
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
Q This is an e-mail from Ms. Vrablic to you on pril 8th, 2016. Do you see that?
I do.
Q She's giving you an update, correct?
It appears that way, yes.
Q Did you receive it on or about pril 8th, 2016?
I don't recall this e-mail, but I -- if I may just have a moment to read it.
THE COURT: I'll give you a five-minute warning at 11:25.
Okay. Thank you.
Q Do you have you any reason to believe you did not

receive this e-mail on or about pril 8th, 2016?
No.
MR. SOLOMON: We offer it in evidence, your Honor.
THE COURT: Definitely too late for statute of limitations. Overruled. Well, there's no objection.
MR. KISE: Other than the relevance, which is a standing objection, you know where we are on that.
THE COURT: It's a Pavlovian reaction on my part by now.
It's in evidence.
(Plaintiff's Exhibit 558 was deemed marked and admitted in evidence.)
Q Do you see the first paragraph, "Hi, as you know, we heard the final answer yesterday, with Dominic speaking with Dave, outlining the bank's review/decision of the request." Continues on the next paragraph, "Needless to say, we are disappointed that the bank couldn't make the exception in this case."
Does that refresh your recollection that the bank declined the request for the loan in or about 2016?
No, I think I had said prior that I didn't think anything had culminated in around that time frame, so that's consistent with what appears to be this e-mail.
Q Does this refresh your recollection that it was the bank's decision not to move forward though?

No.
Q Do you recall entering into a lease for unit Penthouse 28 at Trump Park venue?
Yes.
Q Is that also a street address of 502 Park venue?
It is, yes.
Q Did that lease have an option for you to purchase Penthouse 28 for $8.5 million?
It did.
Q To your knowledge, did Donald Trump's Statements of Financial Condition take into account this option in valuing this unit?
s I had told you a year and a half ago when we spoke, I wasn't involved in his Statement of Financial Condition, so I can't say what it took into account or did take into account.
Q Did there come a time that you entered into a lease for Penthouse 20 at Trump Park venue?
Yes.
MR. SOLOMON: I'm going to ask to mark, as PX-623, a series of documents, including lease, second amendment, assignment and assumption, and first amendment.
(Plaintiff's Exhibit 623 was deemed marked for identification.)
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.

(Whereupon, the exhibit was displayed on the screen.)
Q Do you recognize these documents?
They appear to be copies of a second amendment to the lease with 502 Park venue, of Penthouse 20, yes.
Q In addition, on page four is an assignment and assumption of lease. Do you see that?
On page?
Q Four of 22.
Four -- I do see that, yes.
(Whereupon, the exhibit was displayed on the screen.)
Q nd then page eight of 22 is a first amendment to lease. Do you see that?
I do see that, yes.
Q nd then page 11 of 22 is the actual lease of a condominium unit. Do you see that?
(Whereupon, the exhibit was displayed on the screen.)
Yes, I do.
Q Is that your signature on page six of this document?
(Whereupon, the exhibit was displayed on the screen.)
That is my signature, yes.
Q nd is that your signature on page ten of this

document?
(Whereupon, the exhibit was displayed on the screen.)
It is, yes.
Q nd is that your signature on page 22 of this document?
(Whereupon, the exhibit was displayed on the screen.)
It is, yes.
MR. SOLOMON: Your Honor, we offer this in evidence.
THE COURT: Granted. It's in.
(Plaintiff's Exhibit 623 was deemed marked and admitted in evidence.)
Q If you turn to page 14.
(Whereupon, the exhibit was displayed on the screen.)
Q Paragraph 49(d), did you understand that you had the exclusive right to purchase the unit, Penthouse 20, for $14,264,000 during the term of this lease?
That's consistent with my memory of our -- of the option price, yes.
Q Do you know if any filings that were required under the Martin ct or New York Condominium Law disclosed the existence of this option?
I don't know.

Q Do you know if any of your -- of Donald Trump's Statements of Financial Condition, between the time of execution of this lease and your departure from The Trump Organization in 2017, took into account the existence of this option in valuing this unit?
I don't know.
Q We talked about Donald Trump's Statements of Financial Condition in passing. Just so the record is clear, between 2011 and prior to your departure from The Trump Organization in 2017, were you aware that Donald Trump had personal Statements of Financial Condition?
s we discussed, I -- roughly a year and a half ago, I would assume he would have personal financial statements that he would work on with his own accountants, but those weren't things that I was privy to.
You showed me a few documents and e-mails and correspondence which reference financial statements generally, but it was not something that I was involved in.
Q I understand you may not have been involved in it, and you, in your answer, you used the word "assume."
Did you know whether he had personal financial statements, Donald J. Trump?
Yes. I said to you then, and I say to you now, I'm not involved with his personal financial statements. I worked at the company, so I knew about company statements, periodically,

asset statements, but I didn't know about his personal statements, per se, other than what you've shown me.
Q So, then, is it fair to say that you had no role in preparing any of Donald Trump's Statements of Financial Condition?
MS. H BB : Your Honor, asked and answered.
THE COURT: You used different language before, so I'll allow it.
Let's, again, be clear between the generic financial statements and the specific Statements of Financial Condition, so.
MR. SOLOMON: I'll rephrase my question, your Honor.
Q Did you have any role in preparing Donald J. Trump's Statements of Financial Condition?
Not that I'm aware of, no.
Q To your knowledge, did you ever provide valuations for any of the assets reflected on Donald J. Trump's Statements of Financial Condition?
Not that I can recall, no.
Q Did you ever review any of Donald J. Trump's Statements of Financial Condition before they were finalized?
I don't recall that, no.
THE COURT: Six-minute warning.
MR. SOLOMON: I can go onto another area or --

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THE COURT: Break now?
MR. SOLOMON: Whatever the Court's preference.
THE COURT: We could take a vote, but let's take a break now. So 15 minutes. So be back here at 11:40.
MR. SOLOMON: Your Honor, an admonition to the witness, please.
THE COURT: I will direct the witness not to discuss your testimony or this case, or anything about them, while you are still a witness.
THE WITNESS: Thank you.
THE COURT: Sure.
(Whereupon, a 15-minute break was agreed upon and taken by all parties.)
(Continued on the next page.)

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MR. KISE: Your Honor, can we approach for one second?
THE COURT: Yes. I go up the stairs faster after a day off. So come on up.
(Whereupon, there was an off the record discussion at the bench between the Court and counsels.)
THE COURT: Mr. Solomon, go ahead.
MR. SOLOMON: Before we bring the witness in I have one housekeeping matter to bring up on a document. Can we please pull up 3226, which has already been admitted into evidence.
nd just so the Court is aware, this is the same e-mail chain we were arguing about earlier. nd if you see the top, it is from Jason Greenblatt, and it has "to Ivanka Trump, llen Weisselberg David Orowitz," so I think that removes any objection defense counsel may have had.
MR. KISE: It removes that objection.
MS. H BB : Not the other objections.
THE COURT: The other objections are overruled. That objection is withdrawn, since it is from or to Ivanka.
COURT OFFICER: Ready for the witness?
THE COURT: Yes, ready.
(Whereupon the witness resumed the stand.)

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THE COURT: Mr. Solomon, please proceed.
MR. SOLOMON: Thank you, Your Honor.
Q Let's talk about the Trump Hotel Tower in Chicago.
Okay.
Q Did there come a time that the Trump Organization sought to refinance the debt on that property?
Yes. Prior to my leaving the company, yes.
Q Yes, prior to your leaving the Trump Organization, did there come a time that the Trump Organization sought to refinance the debt on the Chicago property?
Yes.
Q Okay. Did you reach out to CSG Investments to gauge their interest in refinancing the debt?
I don't recall whether I did or didn't.
Q Sure.
MR. SOLOMON: I am going to ask to hand to the witness PX-3236, which is already in evidence.
(Handing)
THE WITNESS: Thank you.
Q nd this is an e-mail chain. The top is you forwarding to David Orowitz an e-mail you received from Jacob Cherner at CSG Investments. Do you see that?
I do, yes.
Q If you look at the e-mail you received from Mr. Cherner, did you understand that for refinancing Chicago,

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in or about 2012, the baseline rate would be around LIBOR plus 500 basis points?
I don't recall the specifics of the transaction. I don't remember this e-mail.
Q Do you have any reason to believe it is not accurate?
No.
MR. SOLOMON: I am going to ask to be handed to the witness PX-3239, which is already in evidence.
(Handing)
THE WITNESS: Thank you.
Q This is an e-mail chain, the top one is from you to Jared Kushner@observer.com, TIHT Chicago Refi. Do you see that?
I do, yes.
Q nd you are forwarding on an e-mail you had received from David Goodman, correct?
It appears that way, yes.
Q nd Mr. Goodman is at Deutsche Bank or was at Deutsche Bank at that time, correct?
I don't remember David Goodman. I recall Rosemary, obviously, we spoke about her earlier. nd she is, I see that she is copied on this e-mail.
Q But you don't recall David Goodman at all?
Only, I think, in documents you have shown me. But I don't think I worked extensively with David.

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Q David -- was David in the commercial real estate group?
I don't -- I don't recall.
Q You will see on this e-mail, excuse me.
You will see on this e-mail Mr. Goodman attaches term sheets for hotel and condo financing. Do you see that?
It appears that way, yes.
Q nd so we all understand, the Chicago property had two parts to it, correct?
Could you be more specific?
Q Sure. It had a commercial portion, yes?
There was a hotel, hotel condo, residences, and a retail component.
Q Retail component being commercial?
Sure.
Q Or do you refer to that as a retail component?
You can refer to it as either.
Q So it had two components, correct?
Sure.
Q Okay. If you look at the first term sheet which starts on page two, term sheet which starts on page two, Trump International Hotel and Tower, and it uses the term commercial; do you see that?
Yes, I do.
Q If you turn to the tenth page of this document, the

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proposed interest rate.
Which page?
Q Page ten of 27, which is schedule for the commercial refi term sheet. Do you see that?
I do, yes.
Q nd the interest, the proposed interest rate is 345 basis points above the yield on the ten year on-the-run swap rate. But in no event less than 5.28 percent. Do you see that?
I do, yes.
Q Now let's turn to the condo term sheet. That's the hotel and condo portion that you were referring to, right? You will see that begins on page 15 of 27. It says "condo" across the top.
I see that.
Q Okay. Turn to page 22.
The interest the proposed interest rate for this portion of the refi is the sum of the benchmark and the spread. Do you see that?
Yes.
Q nd the spread is 800 basis points, do you see that?
I do, yes.
Q nd the benchmark is the one month LIBOR as reflected on telerate or in certain instances an average of London Interbank Offered Rates ("LIBOR") for dollar deposits in an

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amount equal to $1 million offered in the London Interbank Euro-dollar market for a term of one month. Do you see that?
I do.
Q Did the Trump Organization go forward with the refinancing of the Chicago property on these terms?
I don't believe so.
Q I am going to hand up what we have marked PX-477 for identification.
(Handing)
Q You will see this is an e-mail from Emily Schroeder to you and others at the Trump Organization with ccs to people at Deutsche Bank and Loeb and Loeb. Do you see that?
I do, yes.
Q "Ivanka, we are pleased to present you with the agreed upon summary of terms and expense coverage letter for the refinancing of the Trump --
THE COURT: It doesn't say "refinancing" it says "financing."
MR. SOLOMON: Excuse me, you are right, Your Honor.
Q "For the financing," excuse me, of the Trump International Hotel and Tower in Chicago. Do you see that?
I do.
Q Who is Emily Schroeder?
I recall her having worked with Rosemary on her team,

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Rosemary and Dominic.
Q t Deutsche Bank private wealth management group, correct?
Correct.
Q nd she attaches the summary of the terms, correct?
It appears that way, yes.
Q Do you recognize this document?
I don't.
Q Do you have any reason to believe you did not receive this on or about September 19, 2012?
I don't.
MR. SOLOMON: Your Honor, we offer it in evidence.
MR. KISE: Objection, statute of limitations, relevance and hearsay.
THE COURT: Overruled on all three grounds. It is in.
(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 477 by the Court.)
Q If you turn to page five of seven of this exhibit, you will see it is now described, it is broken into two portions: Facility note ; and facility note B. Do you see that?
I do.

Q nd facility note is for the residential component, if you look to the right of where it says property.
I see that, yes.
Q So note is for the residential portion; and note B is for the commercial component if you go further over to the right. Do you see that?
I see that, yes.
Q nd so the residential component would be the condos we had talked about earlier, correct?
I am reviewing this for the first time in years. It appears to say that. I haven't read the whole document, of course.
Q Under property, the residential component ("residential come point incident") of the property consisting of unsold (a) residential condominium units (b) deeded parking spaces (c) storage spaces and (d) associated common areas.
That's what it says, yes.
Q nd facility note B is the commercial component. Do you see that?
Mm-Hm.
Q Okay.
THE COURT: You can't say mm-hm, you have to say yes or no.
THE WITNESS: Yes. Yes. Sorry.
Q If you look at pricing spread for the residential

component it is L plus 3.35 percent. Do you see that?
I do, yes.
Q nd do you understand that to be LIBOR plus 3.35 percent?
Yes.
Q nd the pricing for note B is LIBOR plus 2.5 percent with a note underneath. "Borrower will have a fixed rate option through the execution of a five-year swap with indicative fixed rate of 3.42 percent as of September 4, 2012. Do you see that?
I do, yes.
Q If you look under guarantor, note has Donald J. Trump 100 percent of principal interest and operating expenses of facility note 's collateral. Do you see that?
I do.
Q nd it also has Donald J. Trump guaranteeing under note B, 100 percent of principal interest and operating expenses of facility note B's collateral. Do you see that?
I do.
MR. SOLOMON: I am going to ask to mark as PX-365 for identification.
(Handing)
THE WITNESS: Thank you.
Q This is an e-mail chain between you and Rosemary Vrablic. Subject is: Pricing update.

Give me one moment to review this document. Thank you.
(Pause)
Thank you.
Q This is an e-mail chain between you and Ms. Vrablic, correct?
Yes.
Q nd on the first e-mail, which if you turn to page two of three, Ms. Vrablic advises you that given the facts that you had discussed with her at that morning's meeting, she is offering revised pricing. Do you see that?
I don't recall this e-mail, but I see what it says here.
Q Do you have any reason to believe Ms. Vrablic misstated your meeting or discussions in any way, shape or form?
No.
Q She offers revised pricing for the hotel, the original rate was LIBOR plus 2.5. She can drop it to LIBOR plus 2.25. Do you see that?
I do.
Q She is able to drop the origination fee by a quarter of a point. Do you see that?
I do.
Q For the condos, with the assumption of a $62 million

loan, she is able to drop the origination fee by one eighth of a point. Do you see that? .75 to .625?
Yes, I see that.
Q nd you respond, if we go further up on page two, you respond: "You are the best, Rosemary. Thank you." nd you ask for a clarification. Do you see that?
I do.
Q nd if you turn to the first page, Ms. Vrablic tells you that your clarification is correct. nd you respond to her: "Thanks Rosemary, we all appreciate it." Do you see that?
I do.
MR. SOLOMON: Your Honor we offer PX-365 in evidence.
MR. KISE: Objection, statute of limitations and relevance.
THE COURT: Overruled. It is in.
(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 365 by the Court.)
Q Did you understand that in dealing with the private wealth management group at Deutsche Bank you were able to save -- withdrawn.
Did you understand that the Trump Organization, by dealing with the private equity management group at Deutsche

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Bank was able to obtain a lower interest rate and lower origination fees than if they had dealt with the commercial real estate group?

I don't think I ever thought about it in that context. I dealt with Rosemary on a couple of deals, tangentially Chicago, but really more Doral and the Old Post Office. So it was, to the best of my recollection, those were the only financings I had done involving the company. So those were the deals that I had worked on.

MR. SOLOMON: Your Honor, could I have a read back of my question? I thought it was a yes or no.

THE COURT: I think so to.

(Whereupon, the record was read back by the court reporter.)

THE COURT: That's a yes or no question.

Well, I had contextualized it only to the extent that I don't think I ever thought about it in comparison to another. I had only dealt with Rosemary and her group in any substantive way.

THE COURT: Is the answer yes or no?

THE WITNESS: No.

Q Let's talk about the Old Post Office in Washington DC.

Did there come a time that the Trump Organization submitted a proposal in response to a request for proposal from

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the General Services dministration?

Yes.

Q Can we refer to Request for Proposal as RFP; and General Service dministration as GS ?

Yes.

MR. SOLOMON: I am going to ask to hand to the witness PX-1164, which is already in evidence.

(Handing)

THE WITNESS: Thank you.

Q It is a long document. Take your time if you need to look at it.

Thank you.

Q Do you recognize --

This brings back a lot of memories.

Q I think you said that to me a year and a half ago as well.

Yeah.

Q Do you recognize that document?

I believe this is our response to the request for proposal from the GS .

Q If you look at the second page of the exhibit, is that your signature on the cover letter?

Yes, it is.

Q If you could turn to page 144, it is Section III of the Trump Organization's proposal: Developers financial

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capacity and capability. Do you see that?

Let me know when you get to the page.

Yes, I see that.

Q Do you understand that the developers financial capacity and capability was a required section in responding to the RFP?

Yes.

Q Do you see there is an asterisk at the end of the title for that section?

I do, yes.

Q nd if you go to the bottom it states: "Trump's financial statements have been provided under separate cover, along with each binder." Do you see that?

I do.

Q Was that an accurate statement?

That Trump's financial statements had been provided under separate cover along with each -- I have no reason to believe not. I assume so.

Q You don't have any?

I don't remember.

Q You don't have a recollection?

No, I don't remember every word of the document, no, of course not. I assume everything is accurate.

Q Because you were very careful not to submit inaccurate information to the GS , right?

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I always endeavor to be careful.

Q t the time of submission of this proposal, was the Trump Organization contemplating partnering with Colony Capital on this deal?

We were, yes.

Q nd at the time of submission of this proposal, had the Trump --

I believe -- I believe it -- at some point we proceeded forward without Colony. But I believe they were still our partner at the time we submitted the original proposal. So, yes, I think so.

Q Okay.

Had the Trump Organization at the time of submission of the proposal executed a letter of intent with Colony Capital for this project? nd when I say, "this project," I am referring to the Old Post Office or OPO project.

Understood.

I can't recall if we had done that prior.

Q Okay. Please turn to page 185.

Okay.

Q Letter of interest from equity partner. Do you see that?

I do, yes.

Q "Trump has executed a detail LOI with Colony Capital to provide equity financing for the redevelopment of the Old

Post Office building." Do you see that?
I do. Yes.
Q Does that refresh your recollection that there was a letter of interest, at least, between the Trump Organization and Colony Capital at the time of submission of the proposal?
It doesn't reflect -- refresh my recollection. I have no reason to believe it is not accurate.
MR. KISE: Your Honor --
THE COURT: Yes, go ahead.
MR. KISE: Is there some point at which there is a limit on where we are headed here today?
THE COURT: Yes, 4:30 today.
MR. KISE: But this is, like, Colony Capital 2011, it is just highly irrelevant. Did we really call this witness here to waste this time; dragged her all of the way from Florida to talk about Colony Capital from 2011, on a deal that is clearly and obviously outside of the statute of limitations? This contract was awarded years before the limitations period.
THE COURT: Mr. Solomon, do we need to excuse the witness for you to explain the relevance, or no?
MR. SOLOMON: If we can, Your Honor, I would appreciate that, that we not have this in front of the witness.
THE COURT: May I ask the witness to step behind

the courtroom.
(Whereupon, the witness stepped down from the stand and exited the courtroom.)
THE COURT: Let me just add, I think significantly, I hope significantly, to my reasonings for overruling the statute of limitations objections to pre-2014 and/or pre-2016 deals. Because these deals, I don't think all of them necessarily, but at least some of them had requirements for updated financials year after year after year. nd although defendants seem to want to discount them or ignore them or something, to me they are very much a part of this case. So it doesn't make sense to talk about the follow-up documentation without establishing the original loan.
Go ahead.
MR. KISE: I would respectfully disagree entirely with that, Your Honor. Because the only thing that is at issue now, according to the government, are the actual certifications themselves. Those certifications could not have -- those are the wrongful acts. I mean other than the things that are within the statute of limitations. If there are things that are post-2014 or post-2016. But seven of the ten transactions, including this transaction, fall well outside of limitations period. So nothing that was done by way of a certification, to the

extent even one was required here in 2015, '16, '17, '18, would have any impact whatsoever on a decision that was made years before the statute of limitations period expired. I mean, there is no possible connectivity between a decision that was made in 2011 or '12 and a certification later. If they want to contend that the certification in 2016 was false in some way, okay, contend that. But it is not going to alter. It is theoretically impossible -- it is beyond implausible to argue that some event that took place in 2016 would have changed the course of events in 2011 or 2012 or 2013. The individuals in 2011, 2012, 2013 and all the way up to 2014, middle of 2014, could not possibly have been impacted by a certification that was submitted in 2015, 2016 or 2017.
So while there is some contextual latitude, I just would, again, submit we got this witness here, we are asking about things that are well far afield. If there is some specific issue with respect to OPO that falls within the limitations period, then okay. But I just -- I am just noting for the record, and I didn't mean to tie up this much time, but you asked. I don't see the connectivity here.
This is true of all of these loans other than the ones that are actually within the limitations period. Because the certifications for the loans, it is the same

issue. certification to Deutsche Bank in 2015 or '16 or '17 could not possibly, even theoretically, arguably, plausibly, have any impact on a decision that bankers made in 2011 or 2012 or 2013 or up to '14. It is just not possible.
So while I get that there has to be some context, we are spending an awful lot of time with a witness who has come an awful long way, who is a non-party, going over what appears to be context.
THE COURT: Well, I agree with your logic that a certification, we will agree to that term, in 2017, doesn't affect the -- anything directly about the original loan, how it was negotiated, how it was finalized. However, just to be clear to everybody, these loans some of the loans at issue here, and I believe this one, I could be wrong, but I am speaking generically, required, as a condition of the loan for the Trump Organization or whomever, perhaps one of the individual defendants, certify certain things in the future. I believe that those certifications are at issue.
Let me ask directly. re those certifications at issue?
(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

MR. SOLOMON: Yes, your Honor.
THE COURT: Is that something that was in the complaint?
MR. SOLOMON: Yes, your Honor.
THE COURT: Do you want to say anything else?
MR. SOLOMON: I want to be guided by the Court. I learned that if the Court is about to rule in my favor, to sit down and be quiet, so. Let us know if you need to hear from us further, but there are many reasons why this is relevant, and that's why we excused the witness. The deal with Colony Capital is relevant. If you look at the document and understand the document in detail, Colony Capital goes through a description of what an appropriate interest rate would be for this type of project based upon their financing and 25 years in the business. nd Colony Capital, according it this submission, is one of top equity partners in the country. nd it goes on and on, your Honor, as compared to the financing that they did obtain at a lower rate by using false and fraudulent financial statements to induce Deutsche Bank to make loans that they should not have made at those rates.
THE COURT: Well, I'll give Mr. Kise the last word, but you are misquoting me a little bit. It's not if I'm about to rule in your favor, be quiet. It's if I'm arguing for you, you don't have to argue for you.

Mr. Kise.
MR. KISE: So first I'm sure, just as an aside, that Mr. Barrack will be very pleased to know that the ttorney General of New York has such a high opinion of him. Setting that aside, I don't see that what Mr. Solomon said -- I mean, he's making my point for me. Which is that he's talking about obtaining loans. There's no issue with obtaining loans with respect to those that are prior to the statute of limitations. That decision has come and gone. The ship has gone. The tide has come in and gone out, however, you want to frame it. There's no --
THE COURT: The ship has sailed, I think.
MR. KISE: The ship has sailed. There's been no order at issue. The issue is, number one, whether certifications were false or not, and there's all sorts of issues with intent and materiality, which we are not going to discuss at the moment, but whether the certifications were false and what the consequences of certifications standing by themselves. s you know, originally, and we believe the First Department agrees with us, we will wait and find that out at some point, but they originally framed all of those as continuing wrongs. Post the decision in the First Department, they framed them as freestanding wrongs. Either way, either way, if they are now freestanding wrongs, then that's what's at issue. nd that means that in 2015,

or 2016, or 2017, but you can't unring the bell with a subsequent certification. You can't say, in 2017, if I submitted a piece of paper in 2017 that was false, that somehow or another that impacted a decision that was made in 2012. That's --
THE COURT: They are not arguing that.
MR. KISE: Well, that's what Mr. McCarty -- that's what you let him testify to. Respectfully, that's exactly what he is arguing, those, the interest rates carry forward. Those decisions were made before the statute of limitations.
Now, if your Honor, if you are clear with us that in fact those calculations are baseless because of that, that's fine. But I haven't heard that. They certainly not conceding that.
So here we are arguing about, and going over issues -- this isn't even the loan document. Let's remember, we are looking at GS documents. The GS decision was made years before the statute of limitations ran.
The GS is thrilled with the Old Post Office renovation. There's no question here that they transformed a hulking relic into a world class facility.
THE COURT: You are starting to sound like your client.
MR. KISE: He makes a point on this, that that's what happened. So I'm not sure why we are debating -- I'm

not sure of a lot of things here, certainly, but this one goes really steps well beyond. We are talking about the underlying contract and whether or not prevailing interest rates in 2011 or 2012 has no bearing on whether a certification in 2016 -- '15, '16, '17, and going forward, was false or fraudulent, or what impact or conclusion is to be drawn from that.
THE COURT: I know I keep adding other reasons why I'm making the relevancy rulings I am. It may also be relevant to disgorgement. It may. I haven't decided the case.
MR. KISE: It can't be. That's exactly our point, because --
THE COURT: Put it in your posttrial brief.
MR. KISE: The die was cast when the loans were made; that we believe was the point of the First Department and why they considered these to be continuing effects as opposed to be continuing wrongs, but that's for another day.
But certainly, even under the ttorney General's current theory of the case, you can't go backwards in time and suggest that a certification that occurred years subsequent to a decision had some impact on that prior decision.
THE COURT: Okay. So, Plaintiff, don't do that.
MR. SOLOMON: Your Honor, may I make just two quick

points? First, so the record is clear, the ttorney General takes no position with respect to Colony Capital. My description is what is contained in the response to the request for proposal about Colony.

Second, the OPO loan is within the statute of limitations as determined by the ppellate Division, so it's relevant.

MR. KISE: The loan, the loan is within 2014, was a month past the 2014 cut off. I mean, we still have a debate over the other issue --

THE COURT: I understand.

MR. KISE: -- but this isn't a loan document. This is a procurement document. That's why we are having this discussion; two completely disconnected points. The only way -- I'm just going to explain to your Honor. The only reason they want this in is because they are going to argue, that's the reason they asked President Trump on Monday about the distributions from The Old Post Office sale transaction. They are going to argue to you that somehow or another those distributions should be disgorged, because the contract itself was procured using some false financial statement; that's clearly where they are headed. I mean, I'm not telegraphing anything that they haven't already thought of, and so they can't do that. I mean, it's just no room for even making that argument in a case where this decision was

made in 2011, '12 or '13. It's just not -- it's not even possible to make that argument.

THE COURT: I disagree. Overruled.

Let's get the witness back and not spend more time.

(Whereupon, the witness stepped into the witness stand.)

THE COURT: Sorry to sort of kept you in the dark. Let's continue.

THE WITNESS: Thank you.

MR. SOLOMON: Your Honor, I guess it would be improper for me to ask for my last question and answer, so I think I'll start a new.

THE COURT: Good idea.

MR. SOLOMON: If I repeat a question, I do apologize.

(Whereupon, the exhibit was displayed on the screen.)

Q I think we were talking about the letter of interest with Colony Capital. If you look at page 185 of 204 I think that's where we were. Do you see that?

That's this document (indicating).

THE COURT: I think it was Monday I complimented all the attorneys for getting us where we are and in a reasonable time. Today I'm going to compliment the technical people on both sides, right and left. It's just

amazing. It's like they could read his mind, read the attorney's mind when they get these documents up and highlight things.

I'll just suggest one more time, it's so easy to follow on the screen, and you have two, one right in front of you. nd then you could see all the highlighting.

s far as I know, they've never misrepresented what the larger document is, so you could trust them. But if you show -- if you feel --

THE WITNESS: I compliment them as well. It's very impressive. Thank you.

THE COURT: This is not your first rodeo, I realize.

THE WITNESS: Like this, yes.

Q Does this refresh your recollection that there was a letter of interest between The Trump Organization and Colony Capital?

I believe I had said before that at some point there was some form of letter of interest between us. I haven't recalled the timing of it though.

Q Okay.

MR. SOLOMON: If you could turn to page 193.

(Whereupon, the exhibit was displayed on the screen.)

Okay.

Q Second sentence of this paragraph -- if you need to turn back to see where this is from, this is a description of central financing. "Through daily participation in the capital markets, Trump and Colony know that construction financing is currently available in top ten coastal MS 's (NYC, DC, San Francisco, Los ngeles) for strong sponsorship, at approximately six percent to seven percent (L plus 500 BPS to plus 600 BPS, with a one percent LIBOR floor) for approximately 55 to 65 percent LTC financing."

Do you see that?

I see that, yes.

Q When you submitted this, what did you understand "LTC financing" to mean?

I would be guessing, now, what I understood that to be. I don't normally use that acronym. It seems a little further down it was a reference to construction financing, loan to construction. I'm not sure.

Q You just don't know?

I can't recall.

Q But the interest rate is approximately six percent to seven percent; correct?

That's what it says here, yes.

Q In the document that you submitted to the GS ?

That's what it says, yes.

Q Did you believe that was an accurate statement at the

time of submission of proposal?
I don't recall this section of the document, so I can't say with clarity, but certainly I wouldn't submit something inaccurate.
Q Did there come a time that the GS identified certain deficiencies in the Trump Organization's proposal?
I recall you having shown me a document asking for clarifications, and -- I think it was just a general GS document with questions relating to the proposal. Yes, I recall that.
MR. SOLOMON: I'm going to ask to put in front of the witness PX-1288, which is already in evidence.
(Whereupon, the exhibit was displayed on the screen.)
THE COURT: Music to my ears.
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
Q This exhibit is a cover e-mail from Mr. Orowitz to Patricia Moore, with cc's including you. nd attached beginning on page three is a letter from the GS dated December 13th, 2011. Do you see that?
I do, yes.
Q nd there appears to be a letter dated September 21st, 2011, beginning on page eight, addressed to Mr. Kevin Terry. He is the senior contracting officer on the OPO transaction;

correct?
He was, yes.
Q nd on page 14 of 19, is that your signature on that letter?
(Whereupon, the exhibit was displayed on the screen.)
It is, yes.
Q nd then at the end, beginning on page 15 is the draft of a proposed response circulated by Mr. Orowitz. Do you see that?
(Whereupon, the exhibit was displayed on the screen.)
I do, yes.
Q Let's focus, if we can, on the GS letter from December 13th, because that appears to be what Mr. Orowitz is proposing to respond to. Do you see that?
(Whereupon, the exhibit was displayed on the screen.)
Yes.
Q Mr. Terry is raising certain questions on factor three about Donald J. Trump's financial statements; correct?
Which -- which page are you on?
Q Sure. Page four of 19, factor three?
Thank you. Yes, I see that.
Q Financial statements appear to have multiple G P

departures, including but not limited to, not including separately held entity financials, no provisions for income tax, and the PV of the deposits not reflected." Did you understand "PV" to mean present value?
MR. KISE: Objection. Foundation.
MR. SOLOMON: I'm asking the witness's understanding on a letter she received and was proposing to respond to the GS on a deal that she had a primary responsibility.
MR. KISE: That wasn't the question, but in all events.
THE COURT: Withdrawn or overruled?
MR. KISE: It's up to you.
THE COURT: Overruled. Only you could withdraw. Only I could overrule.
MR. KISE: I thought you were asking him if he was going to withdraw the question.
THE COURT: I was asking if you wanted to withdraw the objection.
Overruled.
Q Did you have an understanding that "PV" meant present value when you received this letter?
I can deduce that sitting here today, but I don't recall my understanding of what it was back then, or the specifics of this letter, no.

THE COURT: Please remember to speak close to the microphone.
THE WITNESS: Sorry. Thank you.
Q If you turn to page 18?
(Whereupon, the exhibit was displayed on the screen.)
Q Did you understand that this is Mr. Orowitz's proposed response to the issue we just looked at relating to the financial statements?
You said that it was, but I don't -- I don't know.
Q Well, let's look at the cover e-mail. David Orowitz states " ll, I have started brain storming how we can approach the letter."
Okay.
Q "In preparation for our call. Please try to review the letter from the GS thoroughly." That's the letter attached dated December 13th; correct?
Yes.
Q "In addition, read what I have attached and come prepared with viewpoints on how we can create the content that we need and how it should be incorporated into the 30 page presentation, slides, and our verbal scripts."
Do you see that?
I do, yes.
Q So if you go through this e-mail and the attachments,

beginning on page 15.
(Whereupon, the exhibit was displayed on the screen.)
Q Do you understand that to be Mr. Orowitz's proposed responses for discussion among The Trump Organization group?
MR. KISE: Objection. Then or now? Same foundation. Objection.
It appears to be --
THE COURT: It looks like she could answer it. Overruled.
No, I.
MR. KISE: She is answering, "it appears to be", exactly the point. Then or now? She knew it then, and that's what she understood it to be then, or is she saying that's what it looks like now? If that's the case, then there's no foundation.
THE COURT: I'm not sure I agree, there's no foundation. re you asking her knowledge then or now?
MR. SOLOMON: I'll ask both, your Honor.
THE COURT: Okay.
Q t the time you received this e-mail, did you understand that Mr. Orowitz was proposing potential responses to the GS deficiency letter?
I don't recall having received Dave Orowitz's e-mail on this topic.

Q Do you recall having received any -- in any e-mail from anyone on this topic?
Well, I mean, we spent years working on the response to the request for proposals, so there were many, many e-mails, many conversations, many of them with Dave. So I just don't -- I don't have a recollection, sitting here all these years later, over a decade, of this particular e-mail.
Q But this is not -- I didn't ask about this particular e-mail. That's why I made it broader. This is not a response to a request for proposal. This is in response to a deficiency letter received by The Trump Organization after the proposal was submitted; correct?
That's what it appears to be.
Q Okay.
nd even with that information, you have no recollection of working with The Trump Organization people to try and respond to the deficiencies raised by the GS ?
I didn't say that. I generally remember that the GS came back to us and asked for clarification on several items, and we endeavored to get them answers. So they had construction related questions. They had operations related questions. They had all sorts of questions. nd I would speak to the various department heads in charge of those elements, or more often I would speak to Dave, and he would speak to those individuals, and, um, endeavor to provide them with the information they were

seeking on any points of clarification.
Q nd do you recall that one of the deficiencies related to Donald J. Trump's financial statements that were submitted in connection with the original response to the request for proposal?
I don't recall that independent of sitting here today or -- I believe you may have asked me about this a year ago. So, no, independently -- independent of that, no.
Q Okay. Other than what we may have discussed when we took your testimony in ugust of 2022. You have no recollection, as you sit here today, of any questions raised by the GS in connection with the proposal relating to your -- Donald J. Trump's Statement of Financial Condition; is that your testimony?
MR. KISE: Objection. rgumentative.
MS. H BB : Objection.
MR. KISE: Mischaracterizes the testimony.
THE COURT: Overruled. Her answer is what her answer is.
I think I answered that already. I don't recall that specifically. I recall them coming back to us with a series of questions on all sorts of elements relating to our proposal. nd I recall going to Washington, and there was a presentation, and we endeavored to respond to those questions. Whether we did so in writing prior, or in person in Washington, I don't know.

Q Okay.
In your answer you said you don't recall specifically. How about generally?
No, just -- I recall them asking questions many months. It could've been longer than months. fter we submitted our RFP about the RFP, about different components of it.
Q But you don't recall that one of components related to Donald J. Trump's Statements of Financial Condition?
MS. H BB : Objection. sked and answered.
THE COURT: Overruled.
Outside of what you've shown me, um, in a year and a half ago, and now, no.
Q Okay.
MR. SOLOMON: Could we mark as PX-1431. I'm not sure if it's for identification or evidence -- it's in evidence.
(The exhibit was handed to the witness.)
Thank you.
(Whereupon, the exhibit was displayed on the screen.)
Q This document is an e-mail from Mr. Orowitz to you, dated December 17, 2011, attaching "2011 12 17 OPO presentation handout-final-small size.pdf." Do you see that?
Yes, I do.
Q Did you receive this on or about December 17, 2011?

I don't recall having received this specific e-mail, no.
Q Do you have any reason to believe you did not receive it?
No.
Q Did you understand that -- I'm sorry, have you had a chance to review the handout?
It's many pages, so. Would you like -- maybe why don't you ask your question and then I'll see if I need more time to review it.
Q Did you understand that this handout was intended to respond to the issues raised in Mr. Terry's December 13th deficiency letter?
s I mentioned, I don't recall this e-mail, so I can only see what it says here. Which I'm happy to read for you, but I don't have an independent recollection of it from Dave to me.
Q s you sit here today, do you understand that this handout was intended to respond to the December 13th deficiency letter?
I don't have an understanding either way. I don't recall it.
Q Do you recall attending a meeting in Washington, D.C. with Mr. Terry in December of 2011?
I don't remember what the date was, but, um, that

sounds about -- that sounds about right. It would have been roughly that time frame.
Q Okay.
nd was there a presentation made to the GS at this meeting by The Trump Organization?
There was, yes.
Q nd your -- and Mr. Trump, Donald J. Trump attended that meeting?
He did.
Q nd he spoke at that meeting?
I believe he spoke at that meeting.
Q You spoke at that meeting?
I did, yes.
Q s did other representatives of the Trump Organization?
Correct.
Q nd one of the items they discussed was Donald J. Trump's financial statements; correct?
I don't recall them having discussed financial statements specifically. I recall that it was -- the whole meeting was mainly about our vision for the project, and presenting it. We had or architect, rthur Cotton Moore, who was present with us, um, he presented. ndy Weiss, on construction, presented. We talked about our vision for the redevelopment of the project. nd I recall spending a good amount of time talking about our experience developing, or

redeveloping, I should say, historic assets, many of them during a time that preceded my involvement at the company. nd I believe that's what my father spoke about as well. Specifically, I remember him talking about redeveloping the iconic Plaza Hotel, which was quite similar to this asset, um, in its scale and in its, quite frankly, even in the time frame in which it was built.
So it was a general presentation. So I don't recall, with specificity, any discussion over financial statements.
MR. SOLOMON: Your Honor, I would move to strike any portion of that answer other than the last sentence, which related to financial statements, which was my question.
MR. KISE: Your Honor, I think the witness is just trying to move this along, as I have been trying to, because he's asking a bunch of questions about what you remember from 12 years ago.
She's testified repeatedly she doesn't have a present recollection. He's not satisfied with that --
THE COURT: Wait, she remembers the meeting.
MR. SOLOMON: Your Honor, she doesn't have a present recollection? She just spent three minutes describing the Plaza Hotel and how it's similar to this --
MR. KISE: He --
MR. SOLOMON: May I finish?

MR. KISE: You may.
MR. SOLOMON: Describing the Plaza Hotel how it's similar to this, how her father spoke about this, how people speak about that, but she has no recollection when I ask her a question, or giving me a direct answer to my questions. So the witness does have a recollection, your Honor.
I do.
THE COURT: Mr. Kise, overruled. I don't think it's good to discuss this with the witness here.
MR. KISE: Fair enough. Fair enough.
THE COURT: Why don't you --
MR. SOLOMON: Your Honor, I'm moving to strike the portion --
THE COURT: Granted, because it was not responsive.
Q The question was just simply, do you recall, at that meeting, discussing Donald J. Trump's financial statements in any way, shape or form?
MR. KISE: re we still arguing?
I don't recall that.
THE COURT: We are not still arguing.
MS. H BB : She did answer that.
THE COURT: fter she gave a whole speech.
MS. H BB : It was in the beginning.
The caveat would be the intention of the meeting was to talk about our vision for the project, so that's what I recall

having worked so hard on and having brought to light in that conversation.

Q re you conflating the initial meeting with the GS with the meeting that occurred in December of 2011?

I believe there was only one meeting. I don't recall there being two separate meetings. I recall it was -- we were called once to share our vision for the property. I don't recall there being two separate meetings.

THE COURT: Can you represent, as an officer of the court, that there were two meetings.

MR. SOLOMON: I cannot, your Honor; that's why I was asking.

THE COURT: Okay.

MR. SOLOMON: Because the way the witness described, it was the vision for the entire project, yet the December 13th meeting in this handout that the witness doesn't recall, even though she received it, describes responses to the deficiency letter from the contracting officer.

MR. KISE: But, your Honor, there were lots of people at the meeting. It may not have been this witness' role to discuss the things that Mr. Solomon is interested in, and I don't know why he is getting so frustrated when the witness tells him that. Like, okay, this is what I remember about the meeting. I remember our vision, I

remember these things. I don't remember the --

MR. SOLOMON: My question --

THE COURT: He didn't ask that.

MR. SOLOMON: Thank you.

THE COURT: He asked whether she remembered the discussion of financials, not what happened at the meeting, because -- would you like to clarify the situation, witness?

THE WITNESS: No. Just like I said, I only recall one in-person meeting. Everything had been done -- our requests for proposal, everything had been done via paper. I recall one in-person meeting that I remember the intention was prior to selection of bringing the project to life and sharing -- that's why -- that was the purpose of the meeting, as I remember it, not financial statements or anything granular like that, but a big picture discussion of the vision and, um, our experience from a construction perspective; that's why I mentioned The Plaza.

(Continued on the next page.)

Q Did there come a time that the Trump Organization was awarded the contract for the Old Post Office?

Yes.

Q t that point in time had Colony dropped out as a partner in the deal?

I can't recall when Colony dropped out, but I believe it was prior to us being awarded the project.

Q Did you then attempt to obtain financing for the project?

Yes.

MR. SOLOMON: I am going to mark as PX 1302 for identification.

(Handing)

THE WITNESS: Thank you.

THE COURT: We will break at ten of.

MR. SOLOMON: Okay.

THE COURT: That clock is a minute or two fast by my phone, so we will call this the eight minute warning.

Q Have you had a chance to review the exhibit?

I have, yeah. Thank you.

Q This is a series of e-mails, the top is from you to Jared Kushner, correct?

Yes, I see that.

MR. KISE: Your Honor, before the witness

answers, and we may need to have her step out, but this is bordering on marital privilege, which I know Your Honor is aware of from the other witnesses. This is communications between a husband and a wife.

THE COURT: I think we call it spousal privilege, but same deal.

Mr. Solomon, I Trust you recognize that as well. You must have gone to law school.

MR. SOLOMON: I do, Your Honor. These are business terms. This is nothing private between a --

THE COURT: I don't think there is an exception for that.

MR. KISE: There is no business term exception to the spousal privilege. They can bring their expert, Mr. Cohen, back on that issue.

MR. SOLOMON: Your Honor, this has been produced by the Trump Organization. It was given to the Trump Organization, it was in their files, so any privilege that might have attached was waived years ago and was clearly waived when it was produced to us.

THE COURT: I am more interested in the former than the latter.

Just for the edification, Mr. Robert, is there an exception to the spousal privilege just for business information?

MR. ROBERT: I am not aware of it.
THE COURT: I am not aware of it either. But waived, overruled. nd there are third parties on the string.
MR. SOLOMON: I was going to point out that later down on the stream, not necessarily the top two e-mails, but the parties on the stream later down would waive any further privilege
MR. KISE: To the extent of Your Honor's ruling, we note an exception to it. But then this document is waived, the privilege as to this document. That doesn't waive the actual communications. He can't ask the witness about communications she had with her husband at this time contemporaneously. You can't go there. You may be able to ask, okay, the document is waived but.
MR. SOLOMON: With all due respect, that's as to the subject matter of the document.
MR. KISE: No.
MR. SOLOMON: I am not asking about other communications between Ms. Trump and Mr. Kushner. I am focusing solely on the document, the information in the document, and that's what has been waived.
MS. H BB : No.
MR. KISE: Does Mr. Solomon have a case that supports the subject matter waiver for spousal privilege?

I don't believe there is one.
THE COURT: Give me one second.
MR. SOLOMON: Your Honor, I have a suggestion that may address this. If we go question by question I think this may actually not necessarily impact what counsel was concerned about.
THE COURT: ll right. Let's do that.
MR. SOLOMON: Because Your Honor has ruled that its been waived based upon the document.
THE COURT: Okay. We have a couple of minutes let's make use of it.
Q Let's look at the subject on the bottom of page one from Mr. Orowitz to you and Mr. Kushner.
So we can avoid any issue there. Bottom of page one subject: Cap One feedback re OPO. Do you see that?
I do, yes.
Q Is that the Capital One feedback concerning the potential Old Post Office loan?
It appears that way. I don't recall Capital One's involvement in the Old Post Office.
Q Okay. If you look on page two of three at the bottom ending e-mail on June 17 of 2013. Jim Petrus to Mr. Weisselberg and Mr. Greenblatt. Do you see that?
I do.
Q Who is Mr. Petrus?

Jim Petrus. (Peetrus ph.)
Q Petrus?
He was the head of the hotel collection.
Q You stated you had a call with Peter over at Capital One and his initial thoughts right now on the loan are as below.
Does that refresh your recollection that you spoke with Capital One about potential financing for the OPO transaction?
I have a vague recollection, but I think you may have mentioned this to me a year and a half ago. Because I --
THE COURT: Closer to the mic, please.
I don't recall having spoken to Capital One about it.
Q Do you have any reason to believe the information you put in your e-mail is inaccurate in any way?
No.
Q Okay. Principal amount is identified as 110 million. Do you see that?
I do, yes.
Q Term three plus one plus one, what did you mean or what do you understand that to mean?
I would be speculating sitting here today as I don't recall this, but probably years, three years plus an additional two.
Q Right. Three year term for the loan plus two

potential one year extensions?
It seems that way, yes.
Q Rate probably L plus 3.75-4 percent. Is that LIBOR plus 3.75 to 4 percent?
I see that, yes.
Q Is that what you meant there?
Same as before, I -- I don't recall this e-mail so I would be guessing as to what I meant --
Q You cite her --
-- over a decade ago. But that sounds reasonable.
Q Okay. If you go further up, while the next e-mail is from Mr. Kushner to you, it is on a chain that you forward on to Mr. Orowitz. Do you see that?
I do, yes.
Q Okay. So let's talk about that. Mr. Kushner says: "You can get better pricing for such low LTV." Did you understand LTV to be loan to value?
Yes. That makes sense.
Q "Natixis will give you 140 million at that rate most likely. Should I show it to them?"
Do you see that?
I do see that, yes.
Q Why were you showing a Trump Organization potential transaction to Mr. Kushner?
MR. KISE: Objection. This is getting into the

spousal privilege now, any reason for her communicating with her husband, any rationale, any conversations they had were -- it is squarely within the spousal privilege.

THE COURT: It is a perfect time to take a break. I'll do a little research over the lunch hour. We will see you all at 2:15.

I'll direct the witness again not to discuss the case or her testimony or anything related to it during the lunch break until she is no longer a witness.

(Whereupon, a luncheon recess was taken at this time.)

* * *

F T E R N O O N S E S S I O N

* * *

THE COURT: Before we resume with the witness, I want to pick up where we left off before. The e-mail clearly comes in based on First Department Law. I'll read exactly. This is Peerenboom v. Marvel, et cetera. 148 D3d, 531, 2017. t page -- you will find it. I think it is the second page.

Perlmutter's use of Marvel's e-mail system for personal correspondence with his wife waived the confidentiality necessary for a finding of spousal privilege.

There is an SDNY case also to the same effect.

Cassandra, blah blah blah, versus Petal. 565 F.Supp 557. nd the basic point is, if you use a work e-mail that is subject to being seen by other people, you waive the confidentiality. The e-mail here was from a work e-mail to a work e-mail. I'll call B to B, business to business.

So I'll let the defendants make a statement or argue this if they want.

nd then also the question: Why did you send this -- or ask Jared, her husband, about this, to me that doesn't disclose a confidential communication between spouses. It is a question that is basically a business question. What was the business purpose.

Why don't I hear from Mr. Solomon for 30 seconds and the defendants, if they want, for two or three minutes.

MR. SOLOMON: Your Honor, I would also note, picking up your point beyond the business e-mail, when there is a business communication, another First Department case Security Settlement Corporation v. John Paul 128 D2d 429, 1987. The application was also properly denied on the merits, in as much as no marital privilege would attach to the ordinary business records sought here. nd testimony as to "ordinary business matters" of a spouse, citing People v. Melski 10 NY2d 78, 80. nd then there is a jump site.

THE COURT: I totally adopt that also. That's completely relevant here.

MR. SOLOMON: Right. Which goes to the point I raise, Your Honor, about it being a purely business communication, which is an exception to the privilege.

THE COURT: Did you know about that case beforehand or you found it during lunch?

MR. SOLOMON: I will indicate that our strong bench was responsible for that.

THE COURT: Okay. Let's hear from the other strong bench.

MR. KISE: So, Your Honor, without reading your cases, I would -- I'll just say for the record, because I already know where we are going to wind up, the Melski case that they cite is contextually different. I am not going to debate it. There is no point. The document itself -- that speaks to the document itself. s well, everything that you and counsel have put on the record speaks to the document itself, not to the communications they may have had. I would disagree that the conversations they had would now be opened up under some sort of subject matter waiver.

Finally, I think one thing to keep in mind is that the privilege really belongs to the spouse, who isn't here. So Mr. Kushner is not here. It doesn't necessarily

belong to the witness. The privilege belongs not to the witness, but to the spouse against whom the testimony is offered. nd so that is the -- I have to find the cites because my handwriting is not what it used to be, my ability to --

THE COURT: Well --

MR. KISE: The Prink case 48 NY2d 309. nd the Fediuk, I think that's how you pronounce it, 66 NY2d 881.

But to the extent the Court is ruling that the document comes in, which we will take exception to, for the reasons stated, certainly any communications other than the document, if the document comes in they can ask, did you send this, did you not send this, is this what it says here, is this what it says here. But going behind that would invade the privilege, particularly as it relates to Mr. Kushner, who isn't here to invoke the privilege. So she cannot be compelled, the witness cannot be compelled to answer questions about her communications with her spouse, when her spouse, who also retains the privilege, isn't even in the courtroom.

THE COURT: Well, we will address the particular questions as they arise. But the question why did you send this or communicate, that's clearly not privileged.

So let's get the witness.

MR. SOLOMON: Thank you, Your Honor.

COURT OFFICER: Witness entering.
(Whereupon the witness resumed the stand.)
THE COURT: Mr. Solomon, let's continue.
MR. SOLOMON: Thank you.
Q Before the lunch break we were looking at PX-1302. The court officer has put it in front of you.
(Handing.)
THE WITNESS: Thank you.
Q nd we were on page two of three. We had talked about your e-mail to Mr. Petrus -- did I get that right this time?
Yes.
Q Okay. nd Mr. Orowitz?
That's correct.
Q nd then you had forwarded onto Mr. Kushner right above that. Do you see that?
Yes, I see that.
Q nd the question I had for you is, why did you send this to Mr. Kushner?
THE COURT: Please answer.
THE WITNESS: Thank you.
My husband also was in real estate and would have perspective for me. nd so periodically we would discuss what we were working on specific to real estate and more generally speaking.

Q Speaking?
Well, you asked me why I would forward something to him, and that's why I would forward something to him. I recall telling him, I don't remember this exact exchange, but it was not uncommon that I would ask my husband's perspective on something that I was working on.
Q nd after forwarding it on to him, you then asked Mr.-- well, you asked Dave, I assume that's Mr. Orowitz on the e-mail above; do you see that?
I do.
Q To send Jared, that's Mr. Kushner, correct?
Yes.
Q The latest OM, as well as the THC presentation. Is OM offering memorandum?
That would be my best guess, yes.
Q nd THC is the Trump Hotel Chicago?
No, probably the Trump Hotel Collection. I believe that's the anacronym we used.(sic.)
Q Mr. Orowitz then responds to you and Mr. Kushner, with cc to Mr. Flores on the bottom, page one of three: "Hope all is well, see attached for both presentations." So he followed your instructions, right?
It appears that way, yes.
Q "I wanted to get to you right away, but -- before we sent out again -- we are going to remove management fees from

the income statement." Do you see that?
I do.
THE COURT: Please speak closer and maybe a little louder too.
THE WITNESS: My apologies, sorry.
I do, yes.
Q Did you have a view at that time as to whether it was appropriate to remove management fees from the income statement?
I don't know. I think that was Dave that was saying that.
Q I understand it was Mr. Orowitz that was saying that. nd I am asking, did you have a view at that time as to whether it was appropriate to remove management fees from the income statement?
Not as I sit here today remembering -- having a perspective on that, no.
Q s you sit here today, do you believe it was appropriate to remove management fees from the income statement?
I don't know that I have thought about it. I guess it depends, were we managing the hotel? I would need more context to understand if it is appropriate or not appropriate.
Q s you sit here today you don't have a view if it was appropriate or not; is that correct?

That's correct, yes.
Q Before we go on to the next document in this series, I want to go back for a moment. We were talking about your recollection or lack of recollection with respect to the response submitted to the GS for the December 13 efficiency letter; do you recall that?
I do.
Q nd do you recall -- withdrawn.
I am going to ask the court officer to put in front of you PX-1429, which is already in evidence.
(Handing)
THE WITNESS: Thank you.
Q Now, this document is an e-mail from Mr. Orowitz to Mr. Weisselberg, December 16, 2011. Beginning: " llen, Ivanka wanted me to change the language in the G P section. She asked that I review with you."
Does this document refresh your recollection that you had conversations about the G P section in the Trump Organization's response to the December 13 deficiency letter?
No, it doesn't. I don't believe I am on this e-mail. Unless I am.
Q I didn't say you were on the e-mail. I am asking if this letter refreshes your recollection, however --
No.
Q Please let me finish my question.

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-- as to whether you had any role in responding to the G P deficiencies noted in the December 13 letter from the GS ?
No.
Q Do you have any reason to believe Mr. Orowitz was inaccurate in any way when he said you wanted him to change the language in the G P section?
Well, it is a long section. So I don't know which language it is referring to. There is language --
Q Do you have any reason to believe Mr. Orowitz was inaccurate that you wanted any changes in the G P section?
I don't know. You would have to ask Mr. Orowitz.
Q s you sit here today do you have any reason to believe he was inaccurate?
No.
Q He goes on to state that she -- and I assume that refers to you -- ask that I review it with you, meaning Mr. Weisselberg.
Do you have any reason to believe Mr. Orowitz was inaccurate when he reported that you wanted Mr. Orowitz to review it with Mr. Weisselberg?
No.
Q Okay.
MR. SOLOMON: If we could mark PX-327. It is already in evidence.

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(Handing)
THE WITNESS: Thank you.
Q This is an e-mail from Mr. Sullivan to you and Mr. Orowitz attaching a draft term sheet. Do you see that?
I do, yes.
Q nd the reference is the Old Post Office, correct?
I see that, yes.
Q Do you recall receiving this document?
Nope.
Q Do you have any reason to believe you did not receive this document?
No, I don't.
MR. SOLOMON: We offer it in evidence, Your Honor -- I am sorry, it is already in.
Withdrawn, Your Honor, it is already in.
Q If you look at the third page of this document, start with Facility Type.
I see that, yes.
Q $160 million. Facility Type is the loan amount in this context?
Yes.
Q mong other things?
Yes.
Q nd if you turn to page four. Interest costs, top of the page. Do you see that?

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I do, yes.
Q During the redevelopment period LIBOR plus 2 percent or the prime rate; correct?
Yes.
Q nd post-redevelopment period and upon delivery of appraisal indicating a maximum LTV of less than or equal to 60 percent-LIBOR plus 1.75 percent or the prime rate minus .25 percent. Do you see that?
I do.
Q nd if you go to page three, the bottom "this requires a guarantee," correct?
Yes.
Q nd ultimately did Donald J. Trump guarantee the loan from Deutsche Bank on the Old Post Office?
Yes.
Q If you turn to page five. Section Conditions Precedent. Fourth bullet point from the bottom. Quote "Guarantor's financial information" -- before I read that.
t the top it starts with: "Usual and customary for a facility of this size and type including but not limited to receipt, review and acceptance of:" nd then it has a number of bullet points, correct?
Yes.
Q Okay. The fourth bullet point from the bottom, one of the items is guarantor's financial information as previously

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delivered, including current balance sheet, bank and/or brokerage statement to verify liquidity, real estate portfolio summary, schedule of contingent liabilities, cash flow statement and limited review of most recent tax returns. Do you see that?
I do.
Q Were you aware that that was a condition precedent to Deutsche Bank making the loan on the Old Post Office?
MR. KISE: Objection. Calls for legal conclusion.
THE COURT: Overruled. That's not a legal conclusion. That's common sense.
MR. KISE: Condition precedent? That's definitely a legal conclusion.
THE COURT: If the bank says you have to do X, Y, Z to get this loan, to ask the witness does she understand that guarantor had to do X or Y or Z, that doesn't take a legal conclusion. I understand condition precedent would tend to be a legal word.
Is there some way you can change that? Necessary condition? Pre condition?
MR. SOLOMON: Is Your Honor sustaining the objection?
THE COURT: Well I am trying to -- yes.
Q Did you understand that based upon this term sheet,

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that this term sheet recited a condition precedent to making the loan was or were all of the items in bullet point that I just read, the fourth one from the bottom?

THE COURT: ll right. Just rephrase it without using the term "condition precedent."

MR. SOLOMON: That's the language -- Your Honor that's the language used in the document. That's what I am asking.

THE COURT: But that's not a layperson's, a non-lawyer's understanding.

Q Did you understand that before making this loan, Deutsche Bank required the guarantor to provide the information contained in the fourth bullet point from the bottom with respect to financial information as previously delivered and all of the other items identified therein?

THE COURT: Thank you.

Not with that specificity, no. I generally understood that there was a personal guarantee that was a condition of the loan. nd then there was a series of other requirements that were fulfilled by the team in accordance with the terms of the loan. But this level of granularity was not -- was not something I could sit here today and say that I recall.

Q t some point in time did your company, Ivanka OPO LLC, become a member of Trump Old Post Office LLC?

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I don't recall what the entity names are, but that sounds reasonable that it would be one of my entities relating to the Old Post Office.

MR. SOLOMON: Could we have PX-1333. I am going to ask to hand up what I have marked for identification as PX-1333.

(Handing)

THE WITNESS: Thank you.

Q While you are looking at it, I will identify that it is a document Trump Old Post Office Member Corp., Exhibit D. Second mended and Restated Limited Liability Company greement.

nd the second page is the Second mended and Restated Limited Liability Company greement of Trump Old Post Office LLC (a Delaware Limited Liability Company)?

Mm-Hm.

Q Do you see that?

Yes, I do.

Q nd if you look on page 37 of 42, is that your signature under Ivanka OPO LLC?

For page?

Q Thirty-seven of 42.

That is my signature, yes.

Q Okay. Do you recognize your father's signature on behalf of DJT Holdings LLC?

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I do, yes.

Q Do you recognize Donald J. Trump Jr.'s signature on behalf of Don OPO LLC?

I believe so, yes.

Q Do you recognize Eric Trump's signature on behalf of Eric OPO LLC?

I believe so, yes.

MR. SOLOMON: Your Honor, we offer this in evidence.

MR. KISE: Objection, statute of limitations and relevance.

THE COURT: Overruled. It is in evidence.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1333 by the Court.)

Q If you look on the page three of 42, please.

Okay.

Q nd the fifth whereas clause. Does that refresh your recollection along with the signature blocks as to the entity known as Ivanka OPO LLC?

s I said to you, it sounded like a reasonable entity name for the Old Post Office and my interest in it.

Q Was it your understanding by entering into this agreement that you, through Ivanka OPO LLC, obtained an interest in the entity known as Trump Old Post Office LLC?

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Yes, I don't know how the interest was structured, I think it was a profit participation, and that interest was disclosed to the GS . But I don't -- I don't recall exactly how it was structured.

Q You have no reason to doubt that you had an interest in --

No.

Q -- the entity known as Trump Old Post Office LLC, do you?

No, I don't.

Q Did there come a time -- withdrawn.

Do you have a revocable trust?

MR. SOLOMON: Is that the pronunciation we all agreed upon?

THE COURT: I think we like that one better, yes, revoc-able versus re-vocable, (ph.) are we doing revoc-able?

Let's ask the witness.

How would you pronounce it?

THE WITNESS: I am going to go with revoc-able, but re-vocable sounds great. I think it is re-vocable.

THE COURT: I think you just changed your mind there.

Q Do you have one of those trusts?

I don't know if it is active, but I believe -- I

believe I had one at some point in time. I remember that, yes.
Q nd do your brothers, Don Jr. and Eric, also have a revocable trust?
I don't know.
Q Did there come a time that your revocable trust guaranteed to Donald Trump payment of certain amounts he might have to pay under his guaranty on the OPO loan?
I don't believe so.
MR. SOLOMON: I am going to ask the court officer to mark what we have identified as PX-1314 for identification.
(Handing)
THE WITNESS: Thank you.
Q Is that your signature on the first page of PX-1314?
Yes.
Q On behalf of the Ivanka Trump Revocable Trust dated ugust 13, 2010.
Yes.
Q Do you recognize Donald J. Trump Jr.'s signature above yours?
I do.
Q nd do you recognize Eric Trump's signature below yours?
I do, yes.
Q Turn to page nine of this document. Is that your

signature on behalf of the Ivanka Trump Revocable Trust?
It is.
(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

Q nd is that Donald J. Trump, Jr.'s signature above yours?
I believe so.
Q nd is that Eric F. Trump's signature on behalf of his revocable trust below yours?
I believe so.
MR. SOLOMON: We offer this in evidence.
MR. KISE: Objection. Statute of limitations and relevance.
THE COURT: Overruled.
(The Plaintiff's Exhibit was deemed marked and admitted in evidence.)
Q If you turn to the second -- page two, the second whereas clause, "Whereas in consideration for lender making the loan to borrower", and "borrower" is defined above as "Trump Old Post Office, LLC," do you see that?
I see that, yes.
Q "Making the loan to borrower, DJT executed and delivered to lender that certain guaranty dated as of ugust 12th, 2014, (the 'existing guaranty'.)"
Do you see that?
I do.
Q nd if you look in section two, "guaranty", the bottom of the first page, "each guarantor" -- and if you look at the top, "guarantor" is a defined term, "to include The Ivanka Trump

Revocable Trust." Do you see that?
I do, yes.
Q So it's a defined term, "Each guarantor hereby irrevocable, absolutely, and unconditionally guarantees to DJT a prompt and unconditional payment of his or her respective guarantor proportionate share of the guaranteed amount as defined below, as and when the same shall be due and/or payable pursuant to this guaranty."
Do you see that?
I see that, yes.
Q Does that refresh your recollection that your trust guaranteed to Donald J. Trump certain monies he may be called upon to pay under his guaranty for the OPO loan?
No.
Q Do you have any reason to doubt that this document obligated you or your trust to do that?
I have no recollection of this document, so. I would have to have a lawyer read it to determine what it obligated, but I don't remember it.
Q But you have no doubt that you did in fact execute it on the date indicated on the document?
No, I see my signature.
Q Between January 2017 and present, have you received any payments as a result of your interest in the OPO transaction?
MR. KISE: Objection. Relevance.

THE COURT: Overruled.
I believe you said "since January 2017."
Q Between January 17 and present.
Yes, I believe we discussed it this morning. I received a payment upon the sale of the asset.
Q Did you receive any other payments on behalf of -- or in respect of your interest in the OPO Hotel?
I don't believe so.
Q Okay.
Do you recall the approximate amount of the payment you received upon the sale?
Not the exact amount, no.
THE COURT: He didn't ask for an exact amount, or he didn't mean exact amount.
MR. SOLOMON: I have a document, your Honor. I think we could move forward more quickly this way.
I'm going to ask to hand to the witness PX-1373, which is already in evidence.
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
(Whereupon, the exhibit was displayed on the screen.)
Q I understand you are not on this e-mail chain, but I would direct your attention to the bottom e-mail from Patrick Birney, with Donna Kidder, with the cc to Mark Hawthorn and

Michael Levchuck?
I see that yes.
Q You see distributions based upon a sale proceeds from OPO; correct?
I see that, yes.
THE COURT: Please, a little louder and/or a little closer, or a lot louder and a lot closer.
I see that yes.
Q I believe this has previously been identified as the distribution from the proceeds from the OPO sale. Do you have any reason to doubt that?
I'm not, as you noted, copied on this chain, but I've -- it -- so I don't know one way or another if this is the waterfall.
Q Did you receive approximately $4 million from the proceeds of the OPO sale?
That's consistent with my recollection, yes.
MR. SOLOMON: We have nothing further at this time, your Honor.
THE COURT: Okay.
Will there be any cross examination of the witness at this point?
(Whereupon, there is a brief pause in the testimony.)
MS. H BB : Yes.

THE COURT: I was going to say, I gather that is a yes.
MR. SU REZ: Yes.
CROSS EX MIN TION
BY MR. SU REZ:
Q Good afternoon, Ms. Trump.
Hello.
Q My name is Jesus Suarez. I represent certain of the defendants in this case.
Ms. Trump, what role did you have, if any, in creating Statements of Financial Condition for your father?
None, that I'm aware of.
Q Were you responsible for preparing Statements of Financial Condition for your father?
No, I don't believe so.
Q Were you responsible for reviewing Statements of Financial Condition for your father?
No.
Q Were you responsible for approving Statements of Financial Condition for your father?
No.
THE COURT: Well, she said she had no role, so you really didn't have to ask those questions, but let's just move on.
MR. KISE: So we are getting -- your Honor, I'm

just going to note that we haven't even been at it one minute and we are already getting a "hurry up" after they spent hours going over clearly irrelevant documents. I'm just going to note that on the record. Your Honor, that is grossly unfair, respectfully.
THE COURT: Okay. I disagree.
Q Were you responsible, personally, for submitting the Statements of Financial Condition to anyone?
No.
Q Were you responsible for assigning asset values that were assigned to specific assets in the Statements of Financial Condition?
I don't believe so.
Q Were you responsible for developing the methodologies used to value specific assets in the Statements of Financial Condition?
Could you repeat that last one.
Q Were you responsible for developing the methodologies used to value specific assets in your father's Statements of Financial Condition?
No.
Q re you familiar with the Private Wealth Management Group at Deutsche Bank?
Yes.
Q Earlier in your testimony you described Rosemary

Vrablic as a "formidable banker", I believe?
Yes.
Q Why did you describe her as such?
She had an incredible reputation as being exactly that, a long career in the banking industry and considered a very reputable solid lender.
Q How is the Private Wealth Management Division of Deutsche Bank different from the other divisions at the bank?
s I testified earlier, I dealt primarily with the Private Wealth Division, so outside of a few conversations here and there, I really -- that was my experience, was dealing with Rosemary and her team predominantly.
Q Would it be fair to say you developed a professional working relationship with Ms. Vrablic?
Yes.
Q She was the banker assigned to Deutsche Bank to manage the relationship with your family and its businesses; correct?
She was one of the bankers. She had a team alongside of her. She was my primary point of contact though.
Q nd her job, together with her team, was to help develop the relationship between Deutsche Bank and your family; correct?
That is correct, yes.
Q In fact, it was her job to help the bank make money by developing its relationship with your family; correct?

Presumably.
MR. SOLOMON: Your Honor, how would this witness know what her responsibility -- Ms. Vrablic's responsibilities were internally at the bank?
THE COURT: I see the point but, I'll allow the question. nd she answered it.
Q Did Ms. Vrablic do a good job?
Yes. We were very pleased with the relationship from when it was initiated to at least what I could speak to, which is up until the time I left the company.
Q She introduced different products that the Private Wealth Management Division offered to your family and its business; correct?
Periodically.
Q She explained products that were available to members of the Private Wealth Management Division?
Correct, yes.
Q nd those products included loans; correct?
Correct.
Q nd Ms. Vrablic would have explained to you and to your family's business the benefits of banking through the Private Wealth Group; correct?
Yes, she was -- expressed tremendous excitement to have our account.
Q nd Ms. Vrablic would have served as a conduit between

Deutsche Bank and your family's business for purposes of explaining what those opportunities were?
She may have. My relationship with Rosemary was pretty high level, as I testified earlier. We would have preliminary discussions typically focused on an asset where I would describe, um, the property, the opportunity, what we envisioned for its development potential. nd then she would have a team behind her who would dig into the details.
Q nd from time to time, Deutsche Bank would present you with other investment opportunities?
Periodically.
MR. SU REZ: Could we pull up Defendant's Exhibit 307, please.
(Whereupon, the exhibit was displayed on the screen.)
MR. SU REZ: nd zoom in.
(Whereupon, the exhibit displayed on the screen was enlarged.)
Q Ms. Trump, if you could please take a second to review this document.
(The exhibit was handed to the witness.)
THE WITNESS: Thank you.
Q Do you recall receiving this document?
I don't recall receiving this document, no.
Q Refreshing your recollection with the document, does

this document remind you of any instances in which the bank would have presented other investment opportunities to you?
Only in that it seems consistent with them periodically sending us opportunities for investment, but I don't remember this specific example, no.
Q nd would this have been consistent with the bank's practice of developing its relationship with you and your family's business?
Yes, if they were looking to grow the relationship and expand it.
MR. SU REZ: Your Honor, we move to admit Defendant's Exhibit 307.
THE COURT: Granted. It's in.
(Defendant's Exhibit 307 was deemed marked and admitted in evidence.)
Q Deutsche Bank was excited about the relationship it had with your family; correct?
Yes, they were.
Q nd, in fact, Deutsche Bank sought to showcase the relationship that it was developing with your family's business; correct?
That's a characterization of it that I don't know. ll I know is what was expressed to me, which was a level of excitement for the relationship and positive feelings about how it was going throughout the arc of the time that I was there.

(Whereupon, the exhibit displayed on the screen was taken down.)

Q Was it the case of Deutsche Bank wanted to showcase your family's relationship with the bank in a promotional video?

That's quite possible. I don't remember that, but it's quite possible.

MR. SU REZ: If we could please pull up Defendant's 295, pre-marked for identification.

(Whereupon, the exhibit was displayed on the screen.)

(The exhibit was handed to the witness.)

THE WITNESS: Thank you.

Q Ms. Trump, if I could please ask you to review this exhibit.

I see it. Yes, thank you.

Q Is this your e-mail address at the top of this exhibit?

It was, yes.

Q nd would this e-mail refresh your recollection as to a time Deutsche Bank asked you to participate in a promotional video for the bank?

Vague recollection, but not -- not -- I don't -- I don't recall if I did the video or not.

MR. SU REZ: Your Honor, we would move to admit this exhibit into evidence.

THE COURT: Granted. It's in.

(Defendant's Exhibit 295 was deemed marked and admitted in evidence.)

Q Do you recall any discussion with the bank or Ms. Vrablic concerning the different subject areas that they wanted you to speak about in the video?

I think more generally, like I -- it's a long time ago now, but like I said, I was constantly told by Rosemary and members of her team how much they appreciated the relationship and were seeking to grow it.

I'm seeing on this chain a reference to the cochairman Jain, which makes me recall a request from, I believe, Rosemary, or her partner, Dominic, to meet with them as one of their top clients, as he was coming to merica and wanted to meet with individuals that bank with them in New York. So that -- that refreshes my memory on that front, but I don't remember the specific video, no.

Q That's the cochairman of the bank, nshu Jain?

Yes.

Q Do you see it says "What was the key differentiator that DB brought to the table versus other competitors?" Do you see that?

I do, yes.

Q Did you ever provide any feedback to Deutsche Bank as to why you had chosen -- excuse me, why your family's business had chosen to do business with them?

I think I testified earlier that, you know, at one point in time my father was considering building the two projects we spoke most extensively about today, Doral and the Old Post Office, in cash, but we had met with Rosemary. We liked the team. We had heard great things about them. We were excited to work with them. We liked their proposal. nd so I think if I were asked that question, I would probably say the relationship was a huge point of differentiation.

Q Were you present at a meeting between nshu Jain and your father?

I was, yes.

Q Do you recall when that meeting took place?

I do not.

MR. SU REZ: Can we please pull up Defendant's Exhibit 223.

(Whereupon, the exhibit was displayed on the screen.)

(The exhibit was handed to the witness.)

THE WITNESS: Thank you.

Q If you could please take a second to review this letter.

(Whereupon, there is a brief pause in the testimony.)

Q Do you see the date of this letter March 14, 2023?

I see that.

Q Excuse me, March 14, 2013.

I see that, 2013, yes.

Q It's addressed to your father; correct?

Yes.

Q nd it says, "Great to meet you for lunch last week."

I see that.

Q Would this refresh your recollection as to when the meeting with Mr. Jain took place?

No, I don't recall when it took place, but I do recall him coming top Trump Tower at some point and meeting with my father and myself.

Q What was the subject matter of that meeting?

I only remember high level that he -- that it was more of an introductory meeting. I don't believe either of us had ever met him before. nd Rosemary had told us that her chairman was coming in from Europe and wanted to meet with their top clients. So I was left with the impression that she was going to introduce him to my father, and to a couple of other select clients of hers, while he was in town.

Q Do you see where it says "It was a pleasure to see your delight in the build out of your family holdings, and your justified pride in having your children in the business."

I do see that, yes.

Q Were the family holdings discussed at the lunch meeting with Mr. Jain?

Yes, it was -- I recall it being a very, very friendly meeting and him encouraging us to do more business with Deutsche Bank. I think it was a little bit of a sales call, stopping by, talking about the different deals we had pending, um, that I'm assuming Rosemary had briefed him on, and suggesting that we do additional business with the bank.

Q nd how did your father respond to the meeting between Mr. Jain and himself?

It was very positive. There was a very nice -- it was a very nice meeting.

Q Who was present at this meeting?

I recall my father, of course, being there, um, and myself. llen Weisselberg may have been present as well.

Q nd after this meeting --

nd Rosemary.

Q Ms. Vrablic?

Potentially Dominic as well, but I don't think so.

Q Who is Dominic?

Rosemary's partner.

Q Is that Dominic Scalzi?

Yes.

Q nd after this meeting, your family's business continued to do business with Deutsche Bank; is that correct?

Yes.

Q nd that included making deposits at Deutsche Bank?

I believe so.

Q nd that included the family business engaging in loan transactions with Deutsche Bank; correct?

Yes.

Q nd that included those loans resulting in interest being paid to Deutsche Bank; is that correct?

Yes.

Q Was there competition within Deutsche Bank for your family's business?

I don't know how I would characterize that. I think we discussed before my experience was with the private bank. I viewed it as a team. I'm assuming, at a big multinational bank there would be many such teams, but Rosemary was the one that I was familiar with and established a relationship with.

Q Did your family's business have an existing relationship with Deutsche Bank before you were introduced to Ms. Vrablic?

Yes.

Q nd was it the case that within Deutsche Bank, the relationship shifted over to the Private Wealth Management Group?

I don't know if it shifted, but that's where my relationship was, and the loans that I worked on were with Rosemary and her team.

Q nd was that because Ms. Vrablic, Rosemary, courted

your family's business?

Yes, in part.

Q Were other business sectors inside of the bank also courting your family's business?

I can't speak to -- I can't speak to that, but only to the outreach from, from Rosemary and the -- and I guess her boss, the cochairman, and their interest in doing relation -- doing business with us.

Q What was your individual role in acquiring -- withdrawn.

What was your individual role in your family's decision to acquire the Doral property?

(Whereupon, the exhibit displayed on the screen was taken down.)

Initially, it was being marketed by a brokerage company, um, as part of the bankruptcy reorganization we had discussed a little bit earlier, and we had looked at the project, um, had ended up, I believe, not initially submitting a bid.

There were several people that I recall that were involved at that point in the bidding process, but I remember, then, Michael sher, who is helping spearhead the process on behalf of -- on behalf of the sellers, reaching out and re-engaging us in the bid process.

Um, and I remember the very inconvenient timing of his

phone call, because I think I may have been in the hospital, or about to go to the hospital with my first child. nd he called and he said -- I may have actually been in the hospital -- that if we were interested, um, we had the opportunity to be the stalking horse bidder for the project. nd it was pursued from that point forward, and multi-year multi-million dollar renovation, soup to nuts, of the property was embarked on, and a redevelopment.

Q Why was Deutsche Bank selected as the lender in that project?

Well, I spoke before about the relationship, and they had a stellar one, and one that was directly told to me was excellent. nd it was a whole multitude of factors, obviously. They gave us a firm sheet with terms that we were interested in pursuing.

So there was a whole series of reasons why we chose to do a deal with them. I don't think it's one thing sitting here today.

Q Was the development of the relationship by Ms. Vrablic a factor in that decision?

Oh, of course, yeah.

Q nd, of course, there were other options to finance that acquisition; correct?

There were. I think we spoke about a few of them today. I'm sure there were more that I can't recall, um, over

12 years out.
Q It certainly would have been possible for your family's business to self-finance the acquisition; correct?
We discussed it.
Q nd it would have been possible to talk to any number of different lenders who could have provided financing for the acquisition; correct?
Yes.
Q It would have been possible to sell and asset and use the proceeds to finance the acquisition; correct?
Yes.
Q How was the Doral property identified as an asset that your family's business was interested in investing in?
Through the public process I mentioned earlier, but my father had a deep and nostalgic love for that particular property. He used to tell us stories about having gone there as a child with his own father, um, when it was owned by the Kaskel family.
So he told me he took my mother there. They had, at one time, the greatest spa in the world, um, and they had gone there as a couple. I believe I may have even gone there as a child with him as well. So between him being there with his father, on a golf trip with my mother, and I believe me as a small child, he had a lot of, um, sentimental affection for the property, and also a strong feeling that it was not being --

that it was not living up to its potential, physically, in terms of what the asset had become under the then current ownership, or operationally, based on the operating performance of the management team in place.
(Continued on the next page.)

Q nd what was your vision for redeveloping that property?
Ooh, it was a huge project and Herculian because of the size and scale and enormity and the sheer number of acres, number of rooms. Most of my attention was focused on the actual redevelopment of this asset and OPO. You know, once I had worked with the team and there was high level agreement around the terms of the financing, my attention really went on to the redevelopment of the actual asset, and repositioning it for success, and overseeing the construction and the design of that. So we renovated all 700 plus rooms, ballrooms, meeting spaces, common areas.
I was less involved in the golf component. My father has a particular affinity for golf and a particular vision for that. So typically he would focus on the golf and I would focus on the resort itself.
But it was a -- it was a big project. It was a lot of work, a lot of time, and a lot of energy applied towards an end result that I feel very proud of. nd still now that I live in Florida, have the good pleasure of visiting periodically.
THE COURT: Five minute warning.
Q Was that vision for the property conveyed to Deutsche Bank?
Of course, yes. They were quite excited by it. They

sent teams of people down to tour the property, to visit the property, and to, you know, experience it in advance of our purchase.
Q What impressions did Deutsche Bank have after the project had been successfully repositioned?
They were very happy.
MR. SU REZ: Please pull up Defendant's Exhibit 324.
(Handing)
THE WITNESS: Thank you.
Q Ms. Trump, do you recognize this e-mail?
I don't remember the e-mail. But I do remember, as I think I just stated, that they were really impressed by what we had done over the course of several years in terms of upgrading and refurbishing the property. s I mentioned, Rosemary and her team had been at the property as we were acquiring it, so prior to the renovations. So they saw firsthand the extraordinary change in what the asset had become.
Q Would you agree with me that this is an e-mail that Rosemary Vrablic sent to you on March 8, 2013?
It appears that way, yes.
Q nd do you see where it says: "Ivanka, I am so glad we got to see you and have you show us the new rooms"?
Yes.
Q Is that a reference to the renovated rooms at the

Trump Doral?
I assume so, yes.
Q It says: "They look amazing. I have had a wonderful time here and it is really impressive to see what you have accomplished so quickly." Do you see that?
I do.
Q nd that, again, would have been a reference to the Trump Doral, correct?
I assume so.
Q Which was the collateral for the loan that Deutsche Bank made to the -- to your family's business, correct?
Correct.
MR. SU REZ: Your Honor, we move to admit this exhibit into evidence.
THE COURT: Granted. It is in evidence.
(Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 324 by the Court.)
THE COURT: nother two minutes, if you want.
Q nd in fact, were they so pleased with the manner that the asset had been repositioned that they agreed to an amendment of the loan terms to let the guaranty on it burn off?
There was a step down of the guaranty, if I recall, once the property was operational. nd they could see that we invested -- what we had invested and obviously verified that

into the collateral to enhance it and to make it what it now -- what it now is.
MR. SU REZ: We are at a good breaking point.
THE COURT: Okay. ten-minute break over the next 15 minutes. See you all soon.
(Pause in the proceeding.)
THE COURT: Let's get the witness.
(Whereupon the witness resumed the stand.)
THE COURT: Mr. Suarez, please continue.
MR. SU REZ: Thank you.
Q Ms. Trump, I understand you weren't really involved in the Trump Chicago project, correct?
Yeah, just only tangentially.
Q But you are aware that the private wealth group of Deutsche Bank facilitated a loan on that property, correct?
Yes.
Q nd in fact, earlier the government showed you Plaintiff's Exhibit 3239.
MR. SU REZ: Can we pull that up, please? nd if we could turn to the first page.
Q Dave Goodman. We can go to the following page from Deutsche Bank. I believe you testified earlier today, correct?
Yes. I don't really recall David, but it sounds vaguely familiar.
Q ll right. Let's keep going.

ll the way at the top, you see says: "It is not a commitment, it is for discussion purposes only"?
I do.
Q Would you have understood these terms and conditions that were presented on this document to be something that could be further negotiated?
I think that's reasonable. I don't recall this.
Q It could have been further discussed?
Sure.
Q It was for discussion purposes only?
That's what it says.
Q It wasn't actually an offer?
That's what it says.
Q nd again, when it came to the Trump Chicago property, there would have been many different financing options that would have been on the table to your family's business, correct?
I believe so, yes.
Q They could have self-financed, correct?
I believe so.
Q They could have talked to any number of different lenders, correct?
Yes. I was less involved in Trump Chicago. But it was a very iconic asset on Michigan venue in the heart of Chicago.

Q nd the private wealth management group was very interested in doing that transaction as well, correct?
That's what I remember.
Q Turning to the Trump Old Post Office, how did you learn about the opportunity to redevelop the Old Post Office property in Washington DC?
The General Services dministration put the project out for an RFP as we discussed earlier. nd I don't recall exactly how I first saw it, but I believe that I read about it. nd it was obviously such an historically significant building, such a beautiful building. I was very, very excited about the opportunity to participate in a process with the hope that it would culminate with us being the developers. Which it did.
Q nd what role did you play in the acquisition and development of that project?
I spearheaded the acquisition and redevelopment, so I wore a lot of different hats, at a high level. But I was most focused on the actual vision for the project and overseeing its design, construction, redevelopment. But also shepherding it through the full process.
It was a very, very complicated project. There was an extended lease negotiation with the GS , in addition to the RFP process, followed by the redevelopment itself. nd since it is an historic building there are many, many different agencies. I feel that I remember there were 20-plus different

agencies we had to work with for various approvals. So the vast majority of my time as it related to the Old Post Office was spent on the actual design and development side of the project.

Q What was your vision for the Old Post Office project?

Well, when we took over the building it was completely dilapidated. It was a government owned and managed project with a food court in the basement and some commercial office around the perimeter. nd we envisioned and then went on to execute redeveloping it into a super luxury hotel.

nd I believe we are very successful in that goal, as evidenced by how it looks today and ultimately the purchase price that it sold for, that it was -- it was a labor of love. It was a lot of work to bring that vision to fruition.

We also created a museum honoring the history of the building in the context of the greater Washington DC urban plan, and that was part of our submission. nd worked with a renowned DC architect who had been involved in many historic projects to bring it to fruition.

Q Was this vision that you had for the Old Post Office conveyed to Deutsche Bank?

Yes, of course.

Q nd was Deutsche Bank excited about being the lender on this project?

Yes. bsolutely.

Q Was Deutsche Bank's decision to participate in this project part of its ongoing effort to develop a relationship with your family and its business?

MR. SOLOMON: Objection. Use of the word "participate." They were a lender on this project, they weren't a participant.

THE COURT: I assume he means participant in a generic sense, so overruled.

You can answer the question.

THE WITNESS: Thank you.

I recall Rosemary referring to it, I believe, as the crown jewel of their real estate portfolio. It was, and is, an incredibly special, iconic building that I am really proud to have had the opportunity to work on and dedicate a lot of years of my life to redeveloping.

Q Did Deutsche Bank send representatives to visit the project?

Oh, yes.

Q What were the representatives -- withdrawn.

How frequently would the representatives of Deutsche Bank visit the project?

That I am not sure. Like I said, you know, my relationship with Rosemary was quite high level. nd once there was general consensus around the terms of the loan, I was more involved in focusing on the asset and the redevelopment of

the asset itself, and other people managed the relationship with Deutsche Bank. nd on an ongoing basis the hotel operating team, the construction team, the accounting team, would be in contact, as needed.

So, but it definitely, prior to the loan was made, Rosemary and/or her team would have visited any of the projects that I talked with them about. nd I am assuming on an ongoing basis, but at that point I was less involved.

Q nd the private wealth group team would have visited before they made the loan?

Yes, they did.

Q They would have toured the property?

They toured the property. nd they, for at least Doral and OPO, I can't recall on Chicago, but required independent appraisals of the assets.

Q Earlier today you discussed with the government a meeting between the team at the Trump Organization and the folks over at the GS ; do you recall?

I do, yes.

MR. SU REZ: If we could pull up Defendant's 431?

Q Do you recall what date that meeting took place?

I do not.

Q Do you recognize this document, Ms. Trump?

I believe this was shown to me this morning. I don't

know if it is the same one.

Q Do you see that it is the Source Selection Evaluation Report and Recommendation for the Old Post Office?

I see that's what it says, yes.

Q Do you see on page three of this document it has a schedule, and the schedule includes in the middle of the page development team presentations. Do you see that?

Yes, I see that.

Q Do you see there it says the RFP date had a TBD, and the actual date for those meetings was December 19, 20 and 21 of 2011?

I see that.

Q Does that refresh your recollection as to when the meeting with the GS group would have taken place?

I think I said earlier it sounds about right, that December timeframe.

We definitely were not there three days. So I -- but I recall that many groups were brought in to present. I assume the finalists in the process.

Q nd at the meeting, I would assume the presentation was made by the Trump Organization, correct?

Correct.

Q nd that the GS had questions, correct?

Yeah, I don't recall any -- what those specific questions are. I recall that this was our first and I believe

only opportunity to articulate what our vision for the redevelopment was, and to do so in-person. Because the RFP was submitted as a binder to the location, the GS said to send it to. So this was our, as I recall, our only opportunity to describe our vision for the redevelopment of this iconic asset.

Q What aspects of the presentation were you responsible for that day?

I think I talked about this earlier, but articulating what our plans for -- at the time it was a complete re-purpose because it was a commercial office building and a food court. I think there was a little bit of retail that wasn't food related, but it was pretty much just that. nd we were proposing converting it into a super luxury five-star hotel operation, with world class food, beverage.

nd it was a complete -- it was a complete repositioning of the building. So we talked extensively through that. nd I think as I mentioned earlier we talked about various redevelopment projects that had been done by the company successfully. So my father had redeveloped the iconic Plaza Hotel. The Commodore Hotel -- former Commodore Hotel here in New York; and 610 Park venue. Many others that were historic redevelopments. So we spent quite a bit of time talking about, and I don't recall who spoke about what per se, but spent a lot of time talking about the wherewithal to take on a landmarked historically significant project of this type,

and see it through to completion.

Q You were not the person who was responsible for answering questions about the company's financial condition, correct?

I don't recall those questions having been asked at that meeting.

Q Do you recall if all of the questions that were asked were answered to the satisfaction of the GS ?

MR. SOLOMON: Objection. The witness just indicated she didn't recall any questions being asked.

I can't speculate, but we were awarded the project subsequent to this meeting, so I would assume so.

MR. SU REZ: If we could turn to page 14.

Q Do you see there where it says notable weaknesses and it reads: "Financial statements provided by Mr. Trump were qualified by his accountants as not complying with G P"?

MR. SOLOMON: Your Honor, we are going to object to the use of this document or reading in anything from this document. This witness has never seen this document. She hasn't identified it. It appears to be an internal GS document. It is classic hearsay.

MR. KISE: So like this morning when they did the exact same thing and you allowed them continuously to read from documents that she couldn't authenticate, didn't have a foundation. This is the document that the GS

provided that formed the basis for the decision. Mr. Suarez is just simply asking questions, just like Mr. Solomon did this morning, like you have allowed many, many times in this courtroom, of what was the basis for decision and exploring this witness's knowledge of.

If she doesn't have any knowledge of it, like you said, she can say I don't have any knowledge of it. But otherwise I don't see any difference, goose, gander, however you say. I don't really see any material difference here between what is going on all day and what is going on throughout this trial, and what we are doing now. It is the same. This is the foundational document which is a public record. So the Court can take it in in that regard. nd there is really no reason that it can't be considered. nd whatever knowledge this witness has, she can testify to.

MR. SOLOMON: Your Honor, there is no foundation that this is a public record other than Mr. Kise's representation just now. This is a document that appears to have been produced in connection with this action by the GS to the defendant. So, that I don't know if Mr. Kise has other information to verify that it is a publicly available document.

MR. KISE: It was.

MR. SOLOMON: May I finish, please?

Number two. Number two. The questions that were asked of this witness on the document were e-mails to and from her that she may not have recalled. There is a basis for asking a witness that.

This is a document she had never seen before today. She has not testified that she ever received it; she ever looked at it; she ever did anything with it or knew of its existence. It is an internal GS document.

THE COURT: Okay. Objection overruled.

Let's see what the question -- Can we get a readback of the question? Let me hear the readback and then I'll make a final ruling.

(Whereupon, the record was read back by the court reporter.)

Q Do you see that?

I do.

THE COURT: Wait. Wait. Wait. Hold on. I am still trying to figure out how to rule on the objection. I gave a preliminary ruling, this is the final ruling.

Well, you know, I never mind when someone says do you see that on the document. Yes, she sees it.

Do you see that on the document?

THE WITNESS: I do, yes.

THE COURT: ll right. Let's see what the next question is.

Q Does that refresh your recollection as to any discussion concerning the company's financial condition at that meeting?

It does not, no.

Q Do you have any --

THE COURT: Remember, just a little louder, a little closer.

It does not, no.

Q Do you have any reason to believe that the GS 's own internal document would be incorrect when it says that the financial statements provided by Mr. Trump were qualified by his accountants as not complying with G P?

MR. SOLOMON: Objection, Your Honor. I don't know how this witness would have any idea whether the GS 's own internal documents are accurate, inaccurate; relevant not relevant.

THE COURT: Sustained.

MR. KISE: Your Honor, I --

THE COURT: Let's not argue about this.

MR. KISE: We should argue about it, respectfully. Because this is exactly what they asked about the GS bid document this morning that she hadn't seen. It is the same questions. It is a different document from the GS , but it is the bid document, and they asked questions about Colony Capital and particular

terms. nd they said -- they asked whether you saw that provision; does it say that; do you have any understanding; do you have any reason to believe that is inaccurate. It is virtually identical to the line of questioning that they pursued of the documents that this witness said the same thing about. No, it doesn't refresh my recollection. Do you have any reason to believe it is inaccurate. It is the same.

gain, if we are going to operate under two sets of standards, that's fine. But I would respectfully suggest that that's incorrect, because this is the same thing that they pursued. They have been doing it the entire course of the trial. They have been showing witnesses document after document with no foundation. I have objected hundreds of times now about foundation, about whether or not they have seen the document.

nd they are like, well, it is just for notice, and it is just to ask if that's what it says, and to ask if that's their understanding. So he is asking this witness's understanding. This is the foundational document that provides the basis for the GS to have awarded the contract. It is a public record because it was received pursuant to a FOI request. nybody can do it. It was provided by the GS , there is no dispute. They have had this document. They have known about it

since -- since long since the discovery period.

So I don't see any material difference. I don't see any difference, frankly, material or otherwise, between their line of questioning and our line of questioning, other than its us asking the questions.

MR. SOLOMON: Your Honor, if I may? There is an absolute distinction. It is not the same. The document that I showed the witness earlier today was the submission by the Trump Organization. nd the cover letter on the submission was signed by this witness when it was submitted to the GS . She represented that the information contained in their submission was truthful and accurate. I am entitled to ask the witness questions about her own document where she signed the cover letter and submits it to the GS . It is completely different than an internal GS document and asking the witness if she has a reason to believe whether the GS was accurate or inaccurate. My questions went to the witness's own submission and whether her submission was accurate or inaccurate. So it is night and day different.

THE COURT: Mr. Kise, two things:

One, I think he has got you here, as I remember all of this.

Two, we have talked about the concept of continuing objection. I continuously object, I object now

and I continue to object, to your constant insinuations that I have some sort of double standard here. That is just not true. I don't count whether I have sustained more objections for one side or the other. I don't count, you know, the weight, the number of these things. I make every ruling the way I think is correct and fair. So, I have a continuing objection. But you can keep saying it if it makes you happy that I am favoring one side or the other. nd you have said this about the rulings in this case. I make the rulings based on the facts and the law as I understand it. So to complain that, oh, my gosh, you are making more rulings in their favor than ours, I don't count them. I just make the rulings as I see them. You know, like the umpire says, call them as I see them.

Go ahead.

MR. KISE: ll I am going to say, Your Honor, is, as part of an ppellate record I have to make the record. I have to call it like I see it. nd unfortunately what I see is exactly what I am saying. I wish it were different. I wish we were in a different situation. I respect Your Honor's position. I do, you know that. But I see these rulings constantly going in a different -- let me withdraw that. Frequently going in a different direction, particularly when it comes to issues like this.

THE COURT: Well, you could try to surmise that that's because of bias. Or, you could understand that I think their objections have been of greater validity than yours on the whole. nd that their positions -- well, I'll leave it at that.

So, the objection is sustained. This is not her document. I don't know what the point of this is.

Q Ms. Trump, if the General Services dministration was under the assumption that financial statements provided by Mr. Trump were qualified by his accountants as not complying with G P, would you have any reason to believe that that was inaccurate?

Could you reframe the question?

Q Sure.

If the General Service dministration?

Yes.

Q Was under the impression that financial statements provided by Mr. Trump were qualified by his accountants as not complying with G P, would you have any reason to dispute the General Services dministration's understanding?

No.

MR. SOLOMON: Objection calls for speculation.

THE COURT: Sustained.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

THE COURT: Sustained.

MR. SU REZ: But it's not speculation. It's in the General Services dministration document right in front of us.

I'm asking her about a document that relates to the project that she spearheaded and the pitch that she was at that's memorialized in this document.

MR. SOLOMON: document which your Honor already ruled it's inappropriate to show the witness, and if they try to enter into evidence, obviously we'll object.

So making reference to what's in a document in framing a question creates a hypothetical.

THE COURT: Well, I'm not always against hypotheticals, but I just -- how about a read back of the second time he asked the question.

(Whereupon, the requested testimony was read back by the court reporter.)

THE COURT: That's a ridiculous question. You could ask what she thinks she knows, but referring to this document that is not in evidence, no.

MR. SU REZ: I'm not trying to move the document into evidence. I'm only trying to show her what the GS 's understanding was as reflected in the their document and asking if she has any reason to dispute it. She was at the pitch. She was a witness to the pitch.

THE COURT: I don't know if she knows anything about this document, whether it's a statement in the GS 's document. I think there's been an authentication.

MR. SU REZ: You even heard Mr. Solomon get up and tell us it was an internal GS document. I don't think they dispute that.

THE COURT: He may know it. It is not the same as the record in this case.

MR. KISE: It certainly can come into this case as a public record. It certainly can be admitted as a public record.

MR. SOLOMON: Mr. Kise is representing this as a public record. I think when I was asking questions of Ms. Dillon, if you recall with respect to amendments to a condo plan, there were questions about being a public record, it had to be proved up later. I don't see that Mr. Kise has made any showing sufficient for this document to be deemed to be a public record.

MR. SU REZ: I'm not even trying to move it into evidence. I'm just trying to ask questions about it.

THE COURT: You had asked her three times, and I really don't understand the question, but you heard it three times slightly different.

I'll ask the witness, can you answer that question?

MR. SOLOMON: Your Honor, just note my objection

based on speculation.

MR. KISE: re you objecting to the Judge's question?

THE COURT: Well, I'm just repeating Mr. Suarez's question.

Witness, can you answer that question?

THE WITNESS: I have no reason to believe that the GS wouldn't be accurate in that assessment.

THE COURT: That's her testimony.

MR. SU REZ: I'm sorry, can I get a read back.

THE WITNESS: I think the question was, do I have any reason to doubt the GS being accurate in this document. I have no reason to doubt them.

THE COURT: How about --

MR. SU REZ: I'm moving on.

THE COURT: Instead of "in this document", if they said that somewhere. Plaintiff agrees with that framing of the question?

MR. SOLOMON: Still calls for speculation, but if your Honor has overruled that, we could move on.

THE COURT: So would you doubt it if it was said anywhere, forgetting this document?

THE WITNESS: They were very professional, I have no reason to doubt it.

THE COURT: Thank you.

Q The GS is professional in its valuation of the bid; correct?
Very much so.
Q It was qualified to understand the information that it was being given; correct?
Yes.
Q nd ultimately made a decision after running its selection process; correct?
Yes.
Q nd the team lead by your family's own business was the successful bidder; correct?
That's correct.
Q nd the project was redeveloped; right?
It was.
Q nd you were involved in the redevelopment of the project; right?
Yes.
Q What was the response to the redevelopment of the project by the federal government?
Well, I could speak I couldn't speak for the whole federal government, but I have a few specific recollections I can share with you. Congresswoman Norton, Eleanor Holmes Norton who represented the district and who had spearheaded the push to have this iconic building put out for redevelopment through an RFP process, um, I met with her at her office, at least on one

occasion. I had spoken to her on others. I believe she was there at the groundbreaking ceremony. She may have spoken at it, actually. She was -- I have recollection of her being present. But she was, in my conversations with her, um, very pleased by our plan, our proposal.
She issued some statements, I think, speaking to about me, specifically, maybe not my father, but about her appreciation for what we had done. nd this was an asset that she was very, very close to because, of course, it was in her district.
I also recall, at some point, maybe in -- I don't know what year, but sometime after we had been awarded the project, um, but some -- I believe it was prior to us actually opening, I, um -- there was outreach from Congressman Shuster, I believe, if -- I think it was Congressman Shuster and Congressman Nadler, Jerry Nadler, asking if I would come to Brooklyn and speak in front of an infrastructure committee meeting they were having about the redevelopment of the old post office. nd I understood from the request that it was viewed as a very, very successful public/private partnership. nd they wanted to encourage more RFP's of federal government buildings, of which there are many beautiful, iconic, but also underutilized buildings.
Um, in this particular case I think I remember that before we took over the old post office building, it was costing

taxpayers, I believe -- and this is a little bit of an estimate -- around seven-and-a-half million dollars a year in upkeep to maintain the historic building; the marble, to keep it in good shape. nd because it was being utilized, and obviously when we took over the building, taxpayers stopped funding into that.
So Congressman Nadler, and I believe his counterpart was Shuster, I believe it was the transportation or infrastructure committee asked me, and I went to Brooklyn to speak about the project and what our plans were and what we had done to date, and my positive experience dealing with the federal government through the bid process.
Q nd to be sure, the two congressional democrats that you just listed are members of the United States House of Representatives; correct?
Yes, there was -- I believe --
MR. SU REZ: You know, I'm glad that the government thinks it's funny for us to try to put on our case and to put on evidence of the great work that this family has done for the United States government, and while they are sitting here trying to destroy thousands of jobs in this state. I have to sit here and ask questions and listen to them laugh? That's insulting, your Honor, I'm sorry.
MR. SOLOMON: Your Honor, move to strike that last speech.
MR. SU REZ: They are striking -- they are

laughing, sitting back here laughing. They think this is funny. It's not funny.
THE COURT: Well --
One of the things, just because --
MR. SOLOMON: First, there's no question pending. There's also a motion to strike the last speech by Counsel.
MR. SU REZ: I want the record to reflect that the government is sitting here laughing at their attempts to destroy this company.
THE COURT: Well, I don't think they were laughing at that. I think they are laughing at the fact that the witness testified, or said three, four, five times that these were congressional representatives.
Now you are asking if they are congressional representatives. I know Jerry Nadler, he is a congressional representative. Mr. Shuster, I know the name, I think from Pennsylvania -- does that make sense?
THE WITNESS: I think that's right. Maybe they found the question funny, but I will strike what he said.
Q You can answer.
I don't know if there was a question pending, but we were talking about congressional representatives and congresswoman Holmes Norton, and you just mentioned jobs that were created.
The number one thing she cared about was jobs,

specifically jobs in the District of Columbia. nd it's something that I personally spent a lot of time talking to her about, both construction jobs, of which there were, I believe, over 500 during the two years we were under construction. nd permanent jobs once the hotel became operational. Obviously, as a hotel, you employ a lot more people than as federal office building.

So this was something that she appreciated. She commented on, I think publicly, and we also committed to hiring within the district. I can't remember what the percentage was. But we created training programs and hired within her district as well, which she appreciated and supported.

THE COURT: I'll consider that a supplement to your answer about what the government's reaction was. ll right. Let's move on.

MR. SU REZ: Thank you, your Honor.

Q What was the response from Deutsche Bank to the redevelopment of this project?

Consistent with what I said earlier. They were very impressed, and they were proud to be able to show them that, I believe, after many years, a lot of time, a lot of thought, and a very meticulous execution. We were able to --

THE COURT: Hold on. Hold on. That doesn't answer the question.

The question was, "What was Deutsche Bank's

reaction?" Not how proud you were of it?

THE WITNESS: No, no, what I was saying, I believe that they thought that we had over delivered on the initial vision we had presented to them, so I think they were very, very happy.

MR. SU REZ: Can we please pull up Defendant's Exhibit 299.

(Whereupon, the exhibit was displayed on the screen.)

Q I would ask the witness to please review this document.

(The exhibit was handed to the witness.)

THE WITNESS: Thank you.

Q Do you recognize this document as an e-mail sent by Rosemary Vrablic to you, Ms. Trump?

I have a vague recollection of it, but not specifically.

Q Do you see where it says, "My direct boss, Michele Fassiola (he's Italian) would like to call you and your dad to thank you for being such great clients and for all the business we have been doing together."

I see that, yes.

Q It says, "Your family is in the top ten revenue generating names of sset and Wealth Management now, and he is thrilled with how it's grown."

Do you see that?

I do, yes.

Q Is that consistent with your understanding of Deutsche Bank's reaction to its business relationship with your family and its businesses?

It is, yes.

Q Ms. Trump, earlier the government directed your attention to your lease of a unit at the Trump Park venue, Penthouse 20?

Yes.

Q Do you recall that testimony?

I do.

Q How did you come to lease Penthouse 20?

I had lived in the building for -- for some time, with an exception of at one point living downtown. So around the time I was pregnant with my second child, we entered into a lease to rent the unit, Penthouse 20.

Q Did the lease come with an option to buy?

Yes, it did.

Q How was the purchase price on that option negotiated?

I don't recall the specifics. We never exercised the option, so I don't remember.

Q Did the lease require you to invest money in the renovation of that penthouse?

Yes, this was refreshed for me a year and a half ago when we -- during my questioning by Mr. Solomon. The lease

required me to invest, I believe, six and a half-million dollars, and we ended up investing over seven and a half million dollars in the apartment.

Q What work did you do on the apartment to renovate it?

Pretty much everything. We completely changed the floor plan. We did a new floor plan, um, to accommodate our family. It was going to be the apartment that we would live in as a family for, hopefully a long period of time, but we ended up moving to Washington, so we didn't fully move in.

Q Why did you leave the family business?

I went to Washington.

Q You went to Washington to work in your father's presidential administration; is that correct?

That's correct, yes.

Q Now, when you were working in the family business, were the projects that you did for the OPO and Doral the only things that you were involved with professionally?

No. I had other roles within the organization as well, overseeing various projects, license projects. I would say that a lot of my time, those were very, very large redevelopment projects. So a lot of time in construction development of those two assets, but at the same time I had my own business. We were doing hundreds of millions of dollars in sales, um, an apparel and accessories business that I had, was totally separate and distinct with no connection to The Trump Organization.

business that I had on my own. My own brand.
So I had numerous responsibilities, both with the company and independent of the company, the Trump Hotel Collection was also something my brothers and I collectively were very involved in.
Q How do you feel about the work that you did for your family's business?
I feel incredibly proud of the work that I did of the Trump Hotel Collection, which I just mentioned generally, and these two redevelopments specifically. lot of time, a lot of vision, a lot of hard work. nd as I testified earlier, they were complicated projects. nd I believe that we over delivered on every metric in bringing them to fruition, as evidenced by the fact that they are both flourishing today.
MR. SU REZ: Your Honor, may I have a second to confer with my colleague?
THE COURT: Sure.
(Whereupon, there is a brief pause in the testimony.)
MR. SU REZ: Your Honor, bringing up Defendant's Exhibit 299, which the witness identified earlier was an e-mail from Ms. Vrablic to Ivanka Trump, I would like to move that into evidence.
nd I have no further questions on cross examination of this witness.

MR. SOLOMON: Objection on the document, your Honor. It's hearsay.
MR. SU REZ: Plaintiff's 299? If we could pull it up.
(Whereupon, the exhibit was displayed on the screen.)
MR. SOLOMON: I think you said Defendant's 299.
MR. SU REZ: Defendant's 299.
MR. SOLOMON: Sure.
MR. SU REZ: It's an e-mail from Ms. Vrablic to Ms. Trump.
THE COURT: Overruled. It's in evidence.
(Defendant's Exhibit 299 was admitted in evidence.)
THE COURT: nd that's it?
MR. SU REZ: Nothing further on cross.
THE COURT: ny cross by the other defendants.
MR. ROBERT: No, your Honor.
THE COURT: Will there be redirect?
MR. SOLOMON: No, your Honor.
THE COURT: Oh, then we are through with this witness; aren't we?
Thank you.
THE WITNESS: Thank you.
THE COURT: The witness is excused.
(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Let's talk scheduling for tomorrow on the record.
ctually, does plaintiff rest? Let's hear what he's got to say.
MR. W LL CE: I believe we have some documents to admit.
MS. F HERTY: Your Honor, earlier in this case we introduced two voice messages during the course of Mr. Flores's testimony. We created transcriptions of those voicemails and created them as exhibits. So first would be Plaintiff's -- PX-3297 . It is the transcript for one of those voicemails.
nd then we subsequently created the second voicemail transcription, PX-3298B. This has been consistent with our practice to provide a transcript to the Court of those recordings. We would ask that the Court admit these consistent with what we've done with other exhibits.
THE COURT: Defendants, would you like to at least take a quick look, or how do you want to address these?
MS. F HERTY: They've been added. They were in the exhibit share. You've received them.
MR. KISE: I don't know that we've looked at them. To the extent they are representing true and accurate --
MS. F HERTY: Yes.

MR. KISE: -- transcriptions of the recordings, and the recordings, if your Honor has already allowed those into evidence, then we have no objection.
THE COURT: Right. Okay. They are in evidence.
(Plaintiff's Exhibits 3297 and 3298B were deemed marked and admitted in evidence.)
THE COURT: nything else from plaintiff?
MR. KISE: Your Honor, one other thing in that regard, though. I don't believe we have -- in their opening there were videos played, and I don't believe we have transcripts of those of the -- or at least even if not transcripts, just like line -- page and line references, because I think those were from -- the videos they played there were from the record from the either the depositions or the EUO's, so I just don't think in the record there's a start and stop.
MR. MER: The clip from Eric Trump's deposition was played during his testimony and was admitted as an exhibit. The transcription was admitted as an exhibit. So that one certainly you have. nd I think the others --
MR. W LL CE: We could go check.
MR. KISE: If you tell us the page and number, we have no objection to it at all. The page and line references -- I think Michael Cohen was one of them. There may have been one from Patrick Birney. I don't remember

them all, but whatever they are.

gain, there's no objection. It's just page and line references would be good or useful to have. I'm sure they have them.

MR. MER: That's fine. We'll provide it.

THE COURT: You'll provide -- you know what he is asking for exactly?

MR. MER: Sure.

THE COURT: Okay. Mr. Wallace, anything else?

MR. W LL CE: So --

THE COURT: Five-minute warning.

MR. W LL CE: Thank you, your Honor. We have no further witnesses to produce at this time. I will note, however, we left open the testimony of Mr. Weisselberg pending the document issues. I believe we are still waiting for production material from the defendants that raised that issue. So apart from the reserving our right to recall Mr. Weisselberg, we have nothing further.

We have nothing further on our case in chief, your Honor.

MR. KISE: So do I understand that to mean the plaintiff rests?

THE COURT: Subject to that one condition.

MR. W LL CE: Subject to that condition.

MR. KISE: Well, then, we don't have to do it

today. Since there's five minutes, we could take this up tomorrow. I don't know that that's a valid condition. Meaning, that they are not entitled to it. We have informally, as you know, agreed to work on this. We have been working on it, and we can provide information in that regard. But I would just state on the record there are -- this is just Black Letter Law in the First Department, that there's no such thing as post NOI discovery at trial, just -- there's nothing of the kind.

MR. W LL CE: If not -- Chris, if we are not actually following the procedure you --

THE COURT REPORTER: I'm sorry, I can't hear.

MR. W LL CE: We're doing that. We will renew the letter the Judge asked us to submit and we'll do that on the record. If you are going to produce the e-mails, we'll take a look at that following the procedure. I thought we were agreeing to --

MR. KISE: We've agreed, informally, without waiving any rights, and I don't think they've waived any rights, but when it comes down to whether they rest or not, certainly if they are saying they rest, and that gives us the opportunity to put on our case and to move for directed verdict and do those things, um, subject to -- they could always ask you to reopen the case. They could do that. But it's not a reservation of rights. It's simply just, we are

resting, and if something comes to their attention that would support a reopening of the case, then they could make that function.

I don't know -- by the way, I tend to think all of this is a tempest in a teapot with respect to discovery. Nonetheless, we will continue to proceed informally without anyone waiving their rights. I just want to be clear that at this stage we are not precluded from moving for a directed verdict, for example, because the CPLR -- our expert is here, not me, but that's at the close of the case, the close of the evidence.

THE COURT: Yes, but maybe we could all agree, but this goes back about five minutes ago, that plaintiff is resting conditional, and defendant can move for a directed verdict, or whatever else you want to do. I suppose if plaintiff wants to say, but wait a minute, we can counter that with Mr. Weisselberg's e-mail, testimony, whatever, then they'll make that argument. So I agree, it's a tempest in a teapot. We don't really have an issue here.

Plaintiff would you agree?

MR. W LL CE: Yes. We will rest, and if we need to reopen due to any issues of Mr. Weisselberg, we will make an application to do that.

THE COURT: Okay. So I think that's agreed to.

We have scheduling issues. I'll ask llison to

take over.

MS. GREENFIELD: So the cross, you had initially anticipated was going to be three to four hours. That obviously is not the case. So we have time for a witness tomorrow. So who can we bring in tomorrow?

MR. KISE: We do we don't have any witness for tomorrow because we planned on Monday for the start date.

MS. GREENFIELD: Because you told us you had four hours of cross examination.

MR. KISE: Based on -- first of all, that was based on the direct -- their direct testimony. nd in an effort to streamline the proceedings in accordance with the Judge's wishes, I'm certain that we could have had five hours of questioning, but given the -- given the state of the proceedings and given where they are, in the interest of efficiency, we decided to do what we did. I don't think there's a penalty associated with that.

THE COURT: ll right. So I think, fine, tomorrow we'll have motions. Will you tell us what those motions will be.

MR. KISE: Directed verdict.

THE COURT: How long do you think it will take you to present that motion.

MR. KISE: I think we'll be done, maybe both sides, by the morning, unless they have motions. lthough, I did

see a motion on expert issues --
THE COURT: Right, right.
MR. KISE: -- that we'll need to address. I also don't think that will take -- I would still think we would be out of here by lunch break. I mean, that's certainly my hope, if I'm honest.
MR. MER: I think that's right. Certainly our motion on the experts shouldn't take too long.
THE COURT: lthough, it was pages and pages.
MR. KISE: It was. There's a goose and there's a gander. I'm sure you'll hear that again tomorrow.
MR. MER: That leaves less to argue then.
MR. KISE: There -- and the directed verdict motion will take some time to present, but I don't anticipate that it will be extensive where we'll be here all day.
THE COURT: The opposition to the motion for a directed verdict might take a long time.
MR. KISE: It could. I can't control that. I will leave that in their hands, certainly.
THE COURT: ll right. So both side, we agree, will be here 10:00 tomorrow. nd if plaintiff moves -- obviously if the motion for directed verdict is granted, we won't have to worry about the expert.
MR. KISE: That would be good.
THE COURT: In the interest of judicial efficiency

and lawyer efficiency, I noticed that on defendant's proposed witness list you have McConney two days. I think there's at least one or two other people. Can you have witnesses ready in case it doesn't take two days?
MR. KISE: We do. We do. In the event it doesn't take that long, yes, but I think Mr. McConney, in order to go through the specifics, will take the balance of those days. nd whatever cross they have. I would anticipate that they would have cross.
THE COURT: nd, yeah, I understand. We are still looking at a December 15th?
MR. KISE: We are. The only reason why I haven't provided the further calendar is because we are waiting on witnesses to confirm availability on particular dates. nd rather than confuse the issues with changing it, I'm going to try to get it as close as possible to where we are, but I --
(Whereupon, there is a brief pause in the proceedings.)
MR. KISE: If the government proceeds as we have proceeded, where we put on our witness that they've already crossed and doesn't spend too much time on cross, we may be out of here before December 15th. I'm not suggesting that they need or want to do that.
THE COURT: That's funny to me whenever one side or

the other -- it's always the defendants, say "the government." Sounds like the federal government. You don't represent the federal government, do you?
ll right. So we agree tomorrow just the morning, just motions. ny other housekeeping; that way Mr. Kise can have the afternoon off.
MR. KISE: You hear them cheering outside.
THE COURT: Have a good evening, everyone.
MR. W LL CE: Thank you, your Honor.
(The case on trial was adjourned to November 9, 2023, at 10:00 a.m.)

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In The Matter Of:

NYS ttorney General v.
Donald Trump

November 9, 2023

Ny Supreme Court- Civil

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SUPREME COURT OF THE ST TE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: P RT 37
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PEOPLE OF THE ST TE OF NEW YORK, BY LETITI J MES, TTORNEY GENER L OF THE ST TE OF NEW YORK,

Plaintiff,

- against - INDEX # 452564/2022

DON LD J. TRUMP; DON LD TRUMP JR.; ERIC TRUMP; IV NK TRUMP; LLEN WEISSELBERG; JEFFREY McCONNEY; THE DON LD J. TRUMP REVOC BLE TRUST; THE TRUMP ORG NIZ TION, INC.; TRUMP ORG NIZ TION LLC; DJT HOLDINGS, LLC; DJT HOLDINGS M N GING MEMBER; TRUMP ENDE VOR 12, LLC; 401 NORTH W B SH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 W LL STREET, LLC; and SEVEN SPRINGS, LLC,

Defendants.
----------X

Bench Trial

November 9, 2023
60 Centre Street
New York, New York 10007

B E F O R E: THE HONOR BLE RTHUR S. ENGORON,
Justice of the Supreme Court

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MICHELE P NTELOUK S
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Senior Court Reporters

THE COURT: Let me start with, plaintiff, anything to say, bring up, discuss at this point? nd then of course I'll ask defendants.

MR. W LL CE: Your Honor, I believe we have our motion on the expert witnesses, but I believe the order of operations we determined yesterday that the, if there is a motion for a directed verdict that should be the first motion heard today.

THE COURT: Will there be a motion for a directed verdict?

MR. KISE: re you surprised, Judge? re you ready for me?

THE COURT: Please, yes.

MR. KISE: It may take me a second with the technology. You know how I am with the technology. Okay. Is that working? Still? Yes. If we get any feedback I'll change it around.

Give me one second, Judge, I am sorry.

Thank you, Judge.

Okay. Thank you, Judge.

This -- I'll try and keep this concise, as I said yesterday, to move things along and have us out of here at the noon hour.

The defendants are moving, and I believe Mr. Robert will have comments after myself. The

defendants are moving under CPLR 4401 for a directed verdict. nd that provision, as you know, Your Honor, provides that any party may move for judgment with respect to a cause of action or issue upon the ground that the moving party is entitled to that judgment as a matter of law. That motion is also fully available in a non-jury trial. We cite the Court to the Eion Michael Properties case, 143 .D.3d 622.

I'll also point out, while discussing, sort of, the background and legal standard, certainly the defense view, I think it is the correct view, that because the predicates for the 63(12) violations are criminal statutes, that the civil equivalent of the criminal standard, beyond a reasonable doubt, would apply in this context, so clear and convincing evidence.

We do not believe that the ttorney General can meet that rigorous standard or frankly any legal standard. Even if that's not the standard, we don't believe that the evidence demonstrates that they can meet that standard.

So let's -- I am just going to address briefly what the evidence has established so far. The evidence has established so far that the claims of the ttorney General involve only successful and profitable loan transactions. That is undisputed. It is also undisputed that there are no late payments; no missed payments; the

loans were all paid back timely. 100 million plus in interest. There is no victim. There is no complainant. There is no injury. ll of that is established now by the evidence.

The evidence also establishes that the SOFCs S-O-F-C.

Sorry, I am doing that for the court reporter, because I am going to say that a lot rather than saying Statements of Financial Condition.

nd the certifications were submitted in connection with certain loan transactions that are at issue. nd only the specific parties involved in those transactions made those submissions. I think that's very clear from the documentary evidence in the case, that it was specific entities and specific parties that made those submissions, not the defendants at large. nd that's a concept I'll come back to, Your Honor.

The certifications were true and accurate when made, and the loan covenants were not violated. There is no evidence that the loan covenants themselves were violated.

The SOFCs and certifications were accurate, and this is important, in all material respects. nd that's a key concept that I'll also come back to. There is testimony in the record that the SOFC values were actually

lower than the actual values. President Trump himself testified that he believed the values were lower.

nd I have to pause just for a minute on that, because, you know, in any other context, if we were in any other setting, President Trump would clearly qualify in any court in this country as an expert on real estate, commercial real estate, commercial real estate development, and the commercial real estate industry. This is a man that has been involved for 50 years in reshaping the skyline of New York. I mean, I can list off the top of my head the buildings that he has been involved in in terms of development: The Grand Hyatt; Trump Tower; the complete transformation of the Plaza Hotel back in the 1990s; 40 Wall Street; Trump International Hotel and Tower in Central Park; Trump World Tower; Trump Park; Trump Park East; Trump Palace; Trump Park venue. There are innumerable buildings just in Manhattan.

nd those buildings, I think it is important for the Court's consideration both today and ultimately as you wrestle with the concepts of equitable relief, those represent real jobs, real economic impact in this community, over decades, over a lifetime.

nd his commitment to the revitalization of public resources is also demonstrable. The Ferry Point project. The evidence in this case establishes that

President Trump took the Ferry Point project from a landfill, from a garbage dump where they were moving debris back and forth for 20 or 30 years. No one could do anything with the site. nd has transformed it into a world class facility. Wolman Rink was revitalized. The West Side Yards, which began the revitalization of the West Side, which now includes Hudson Yards and many other things in the vicinity.

So this is an individual whose opinions aren't to be disregarded, as the ttorney General would say, or be cast aside, that there is no value to his opinion. So it is fair for this Court to conclude, based on his testimony as an expert in the industry, an established expert in the industry, that there is some deference to be accorded there.

Setting aside all of the theatrics, setting aside all of the politics, setting aside where we are, if we just look at it on its face.

THE COURT: Were there theatrics?

MR. KISE: We will get to that.

THE COURT: I just have to say one other point. You said one of the buildings, I think Trump Tower, was in Central Park. I don't know how they do it in Florida but in New York we don't allow skyscrapers --

MR. KISE: No, No, sorry. Trump International

Tower on Central Park South. I believe, you are correct.

But his testimony that the values, in his view, other than as he stated, are lower than actual values, is entitled to real weight, because he is an expert.

THE COURT: But he wasn't qualified as an expert, so.

MR. KISE: He doesn't have to be qualified as an expert to be one though. That's my point. You don't have to qualify him and put him on as expert testimony for the Court to recognize and acknowledge that this individual has the requisite knowledge, training and experience to be one. I am not suggesting his testimony is expert testimony. What I am saying to the Court is that his testimony in any other forum would be credited as such. He certainly would qualify.

The SOFCs, back to our evidence, had valid and obvious disclaimers negating intent, materiality and reliance.

There is no evidence in the record of agreement, a fundamental premise to support the conspiracy claims. The evidence establishes that the banks relied on their own independent valuation analysis, not the SOFC values.

So there is no intent to defraud. There's no defaults. No breach. No reliance. No unjust profits. nd no victims.

More importantly, or as importantly, there is no real world impact. s I began, there is no -- they are all profitable loan transactions. There is no record evidence that anything would have been different with respect to the loan transactions or the insurance transactions, that anything would have been materially different or different at all.

There is no party complaining or alleging fraud. Zurich Insurance, one of the alleged victims, according to the ttorney General, still does millions and millions of dollars of business with Trump. I am not sure what the Court's experience is with insurance companies, but I certainly know from many years of dealing on the regulatory side of insurance companies, that if they believe they have been defrauded by someone, they are not doing business with them in the future.

There is no fraud victim. There is just banks satisfied with profitable loans. nd so the ttorney General has converted standard commercial real estate loan transactions into fraud, based not on what the bank says, but what -- on what she says.

nd it is similar to the Exxon case. nd I know the ttorney General's office is familiar with the Exxon case, Mr. Wallace in particular, that there was no testimony from anyone who claimed to have been misled by

the disclosure. We don't have testimony in this record, particularly from the banks, where they say something would be different; I was misled; I was defrauded. That's essential to proving intent and materiality.

s this Court has held in the summary judgment order, it is the ttorney General's burden to demonstrate a component of intent and materiality at this phase. The ttorney General has failed to introduce any evidence of materiality or intent, and instead simply relies on the Court's summary judgment decision to establish both. That decision, however, as Your Honor knows, specifically determined that intent and materiality must be established at trial. nd the failure to do that entitles the defendants to a directed verdict on the remaining causes of action and as to the issue of disgorgement.

So materiality is an essential element. The statutes make this clear. The issuance of a false financial statement needs to be inaccurate in some material respect. It needs to be known to be materially inaccurate. The insurance fraud statute is the same. written statement as part of support of the application --

COURT REPORTER: Sorry, I missed that.

MR. KISE: Sorry, I always go fast when I am reading, I'll stop that.

The insurance fraud statute requires a written

statement as part of or in support of an application for the issuance of a commercial insurance policy, which is known to contain materially false information. That's a different standard than, as Your Honor knows, was applied at the first phase, at the summary judgment phase.

Now, the compliance certificates incorporate materiality.

Just bear with me one minute, Your Honor.

THE COURT: Sure.

MR. KISE: I forgot to bring this up.

Thank you, Judge.

The compliance certificates that are part of the ttorney General's claim incorporate materiality. If you look at the language: The foregoing presents fairly in all material respects, all of the representations and warranties made by guarantor remain true and correct in all material respects.

There hasn't been any evidence introduced about materiality other than just a reference back to Your Honor's opinion, which itself doesn't decide that question on its face.

The guarantor made only this representation. That's the standard and that can't simply be read out of the certificate.

That representation also, importantly, was made

as part of a contractual obligation. The bank, the contracting party, never asserted any breach claim. nd so you have the additional issue that the ttorney General cannot now just step into the shoes of a private party and enforce contract terms that the private party, whose role it was, contractually, to determine issues like materiality, and breach, never claimed any violation.

The OPO loan documents contained a materiality provision together with a representation from guarantor that there has been no material change.

The 40 Wall Street loan contains materiality language. No material adverse effect or change. There has been no material adverse change. There is a definition of what material adverse effect is.

These concepts are at the core of the ttorney General's claims. nd again, they have done nothing to introduce any evidence of materiality other than rely on Your Honor's opinion and their own opinion.

The 40 Wall Street loan continues with another example about material respects certified by guarantor as being true, correct and complete and fairly presenting financial condition. No material adverse change.

The ttorney General's own complaint, as you have heard me say before, 48 paragraphs reference materiality. Twenty-five of those paragraphs reference

materiality in loan covenants. This is a fundamental, core concept.

The complaint paragraphs themselves and I am just giving one example here, paragraph 589, talk about untrue statement of a material fact. material fact necessary to make any material statements contained herein or therein not misleading.

n example of the actual -- I believe this is the 2016, it is -- certificate of compliance. You can see there in all material respects. So materiality is a core concept.

THE COURT: How would you define materiality in this context?

MR. KISE: I would define materiality and I will get there. That's a good question, Your Honor. I would define materiality in this context as through the lens of the user. It is not, respectfully, what you think. It is not what they think. It is not what I think. It is what did the bank think. They are in the role of determining materiality. There is no objective materiality. You have to look at this through the lens of the user. Because everyone's definition might be a little different. Now you heard testimony about a 5 percent standard. nd that's a -- that's a fair standard. nd there is testimony of that in the record. That if you have

someone, like you do here, where the net worth is four and a half or five billion dollars and there is $100 million swing or $200 million swing, yes, that's a lot of money in an abstract sense, but in the context of financial statements, it is not.

THE COURT: Just one thing. There is a record so when you say "they" and point to someone.

MR. KISE: I am sorry, the ttorney General. Fair point.

The Court, the ttorney General, the Defendants, the issue of materiality must be viewed through the lens of the user, in this case the bank or the insurance company as the case may be.

The second key component is intent. Falsifying business records, the statute requires an intent to defraud. nd that intent to defraud is commonly understood to mean to act with intent to cheat someone out of money, property or something of value.

nd we have got cases cited there:

The Saporita case 132 .D.2d 713.

The Jeremias case 66 .D.2d 178.

nd the Briggins case 50 N.Y.2d 302.

dditionally, falsification of business records in the first degree requires the additional element that the defendant intends to commit another crime. There is

no evidence in the record as to what that other crime was. There is a lot of discussion during the course of the case, but nobody has put any evidence in the actual record as to what that other crime was. nd so for that reason alone, the count that relates to falsification of business records in the first degree is subject to directed verdict.

Issuing false financial statements also has an intent and materiality component to it. The issuance of a false financial statement occurs when an individual, with intent to defraud, knowingly makes or utters a written instrument, which is inaccurate in some material respect; represents in writing that a written instrument that he knows is materially inaccurate.

So let's look just briefly, because it is hard to prove a negative, it is hard to prove that there is no evidence of something, but let's look at what we do have. So President Trump testified, and I will point out that the Court did state that it is not here to hear what President Trump has to say. nd we are not here and these people are not here and the ttorney General is not here to hear what President Trump has to say. But I would respectfully say, the Court cannot ignore President Trump's testimony.

nd the fact that there was an adjudication

earlier connected with a collateral matter, should not have any bearing on the Court's view of the witness's testimony or credibility when it comes to the substantive case. nd I am not suggesting it does or doesn't, I am just pointing that out as a matter of procedure.

THE COURT: The first line on that screen: This Court stated it is "not here to hear what President Trump has to say." Do you remember what I said right after that?

MR. KISE: I don't have it in front of me. I have that --

MR. W LL CE: I believe Your Honor said you are here to hear him answer questions.

THE COURT: That's exactly what I remember. So I think it is misleading to just have the first half.

MR. KISE: Since you are the trier of fact, you will ultimately decide that. But certainly the point that I am trying to make, Your Honor, is that the Court cannot ignore President Trump's testimony. nd whatever happened in the course of the proceeding before, that testimony has to be evaluated in the context of whether or not the ttorney General has sufficient evidence to prove intent. nd intent is a subjective analysis. You have to demonstrate that, in a criminal case, you have to demonstrate that the defendants had subjective intent.

nd I won't go through all of the, obviously, the testimony in the record. Here is a question and answer from President Trump's testimony:

"How did you know the banks did not pay much attention to your statements?

" NSWER: Because I have been dealing with banks for 50 years. nd I probably know banks as well as anybody. nd I have borrowed a lot of money. I have paid back a lot of money. nd I know what they look at. They look at the deal. They look at the location. They don't want to get involved in financial statements because that's not what they are after. If a deal goes bad, they want to be able to take the deal back over and, you know, have it. They want you to be able to put up some cash, or whatever it is you may be, including expertise, but they don't want to be fighting for ten years over a personal financial statement. They want to take over the deal."

So that testimony negates subjective intent. If his view, based on 50 years of experience, is I am going to give this statement over and they are going to understand it to be my opinion, compilation statements by definition are the opinion of an owner or the person that prepared them. So there is no assurance of anything other than that. That it is, by definition, an opinion. But if subjectively based on his experience he knows doing deal

after deal after deal after deal with banks, that they are not going to do anything other than say, thank you President Trump, for your opinion. We are going to go do our own homework now. nd in fact, that's what the record shows.

THE COURT: I think you are assuming that I believe him.

MR. KISE: Well, I am certainly suggesting that you should, because there is no evidence to the contrary. There is certainly no evidence to the contrary is the point. I mean, they haven't introduced any evidence that you shouldn't believe him, other than them running around saying as many times as the ttorney General can possibly get it out of her mouth that he is a fraud, he is a fraud, he is a fraud, he is a fraud.

But, you know, what building has the ttorney General built in this community? What expertise does the ttorney General or any member of her staff have in the commercial real estate sector? What understanding do they have? Do they have 50 years of understanding how bank deals are done? Do they have 50 years of understanding how negotiations are handled, as to what banks rely on and what they don't? If you are trying to prove subjective intent, then you need to establish that there is a basis to say, other than just saying it, that the individual is

not credible and not to be believed.

In response to another question. "That's not my question," Mr. Wallace said. "My question is whether you would actually use them to obtain financing.

" NSWER: I would give them, but I don't think anybody paid much attention to them because of the disclaimer clause."

Which I'll come back to.

" nd because generally that's not the way to do it. gain, I have been doing it for 50 years and they look at the property."

There are multiple examples where he continued this testimony, despite many different ways of asking him the question. Which is fine, that's cross examination. But it negates fully any intent to mislead or defraud. The knowledge of disclaimers in 50 years of industry experience goes to the state of mind of President Trump, and the other defendants for that matter, when the statements were given over.

dditionally, President Trump testified that he "gave Mr. Weisselberg and Mr. McConney total authority to work with the very expensive accounting firm."

We heard about that a lot.

" nd they worked with the accounting firm, and they came up with a statement."

Well, New York Courts have held that plaintiffs, if there is no good faith, if there is no evidence -- excuse me. If there is no evidence to suggest that a defendant's reliance on accounting professionals was other than in good faith, then there is no evidence of intent.

nd I would cite the brahami case 224 .D.2d at 233, I believe.

nd the Dillard case 271 New York 403.

It is beyond reasonable for any CEO in a major corporate enterprise to rely on multi million-dollar accountants and staff when -- when dealing with financial matters. So again, there is no evidence of intent. The disclaimers also -- the inclusion of the disclaimers negate intent, whatever the Court may think about the disclaimers substantively, which as you know we disagree with strongly.

THE COURT: nd I wrote extensively, or at least pointedly, about the disclaimer and the worthless clause, and I believe the ppellate Division affirmed me on both. They are not defenses at all. But I'll let you make your record.

MR. KISE: Whether they are substantive defenses or not, a point which we will allow the ppellate Court ultimately to decide.

THE COURT: They already did.

MR. KISE: Well, I mean, again, respectfully, I would disagree with that. But I -- that's why it is up on appeal now.

But in all events, the inclusion of the disclaimer itself and the knowledge of that inclusion and the testimony you have heard, negates subjective intent. If President Trump knows that when he hands this to someone that it is telling them on its face, these are my opinions. The compilation is, by definition, a corroborated opinion -- an uncorroborated opinion. The disclaimers tell the banks what is being provided and not being provided. nd they notify the users, like Deutsche Bank and Zurich, do your own analysis. If that's what is in his mind, it is not possible for him to form subjective intent to defraud. Whether you think it is a defense or not, is a completely separate matter.

Whether it actually survives as a defense, which again, we think it is a full and complete defense, but whether it is or it is not, it is certainly a defense to intent, because it goes to the state of mind of the person providing the statement itself, the SOFC. I know that there is a disclaimer in there.

THE COURT: Wait a minute. I am sorry to interrupt. nd I want to give you --

MR. KISE: No, you can.

THE COURT: I want to give you your due. But you seem to be saying the fact that somebody says don't believe me, which is not what it says anyway, but don't believe me, proves that they are not lying? Or --

MR. KISE: It proves that they have no subjective intent to defraud. Because why would you -- why would you put a bank on notice to do your own homework? Why would you tell them, don't rely on me? Why would you say, hey, this is my opinion. This is what I think, you go do your own homework.

s you heard President Trump testify, in the industry, I mean, often they don't even put statements together.

THE COURT: I see your point. Okay. Thanks.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

MR. KISE: Back to materiality. s stated, the ttorney General cannot ignore materiality, and it permeates the complaint. It permeates the documents, and it permeates the governing law here. But from the opening statement the ttorney General makes clear their approach to materiality. The Court has already found that the People submitted conclusive evidence that between 2014 and 2021, the defendants overvalued the assets in the statements between 812 billion and 2.2 billion per year.

There's no world in which that an overstatement of that size -- there is a typo there. I'm sorry. There's no world in which an overstatement of that size is not material.

So, in fact, the ttorney General's position is that the ruling by this Court on summary judgment meant that what the banks thought and did, just doesn't matter. nd that's just completely inaccurate. It does matter. It -- the materiality must be viewed, and we are going to get there. I'm going to show the Court concrete examples of this through the Haigh testimony and the documents, that, in fact, there is a world in which a difference of that size -- I'm not going to call it an overstatement -- a difference of that size is not material. nd it's the world we are living in right now. It's the real world that these transactions were negotiated and consummated in.

nd the standard under New York law for materiality is that in all probability the omitted or misrepresented facts would, in view of the circumstances, have assumed actual significance in the deliberations of, in this case, a reasonable shareholder, or a bank or investor; that's the Essner case 124 Misc., M-I-S-C 2d 830.

THE COURT: Your position is that no witness testified that they would have regarded these discrepancies as material.

MR. KISE: I don't believe they did. In fact, the witness -- the bank witnesses, and I'll show you that testimony, they never asked them if they would have made any different changes. Let's look at that, because the bank employees, Mr. Haigh and Mr. Weisselberg make clear that the materiality was not demonstrated.

The ttorney General never asked Mr. Haigh if anything would have been done differently. They never asked Jack Weisselberg about if anything would have been done differently. Moreover, the bank considered many, many, many other factors, not just the SOFCs in determining loan approvals and pricing. There's testimony in the record for this. Those factors included the nature of the collateral, the quality of the collateral, the loan to value ratio, the bank's lending history, the actual lending experience with the customer, the bank's experience in a particular

industry, the client's experience in a particular industry, the client's performance in a particular industry, the guarantor's liquidity, the unpledged access -- unpledged assets. That may be unintentional. The unpledged assets by the guarantor, and the economic climate.

THE COURT: Let me give you a hypothetical. Let's say a bank employee says -- and we are doing this because this is your view of materiality. Would it have affected the view of the recipient of the document? Let's say an employee says, "Oh, we viewed it very differently, but we still would have done the deal." Does that make it material, or not?

MR. KISE: Not, because if they would have viewed it differently and still done the deal, that's ultimately what matters, because ultimately what matters is the decision making process of the bank. If they would have approved it, even with this knowledge, then right in their mind it's not material. nd I think the evidence, and I'm going to point to this now, demonstrates that.

Materiality must be viewed through the lens of the bank, not the ttorney General and not the Court. What is material to the bank? nd so Mr. Haigh testified that all approvals were based on the Deutsche Bank adjusted values. nd those -- and I'll show you the specifics here in a moment, your Honor. nd you may recall them. Those

adjusted values reduced the values in the SOFCs by roughly two billion dollars in most years, and Deutsche Bank approved the loans anyway because they didn't view that sort of differential as material.

So when the G says, or the ttorney General says at the beginning of the trial that there's no world in which a $2 billion difference cannot be material, I would suggest that here in the real world it is based on the facts that are in evidence now.

THE COURT: My hypothetical -- sorry to interrupt, my hypothetical, I think you are confusing materiality and reliance. If somebody says we would have -- we would have done the deal anyway, and that could be for any number of reasons; they want repeat business, et cetera. But using your own view, look at it from the eyes of the bank employee, or whomever, if -- let me just ask plaintiffs quickly, did any defendant employee -- I mean, any bank employee, I'm sorry, say oh, yeah, we viewed it differently and if so, who?

MR. KISE: They are certainly going to get their chance.

MR. W LL CE: I guess the question is, would they have said -- would they have done it differently? We didn't present, at trial, the hypothetical of all the evidence that we've shown to show the statements were false.

THE COURT: I'm just asking whether any bank employee said, we would have viewed it differently if we had known B instead of .

MR. W LL CE: Mr. Haigh said that in his deposition, but we didn't put that in front of him at the trial.

MR. KISE: It's not in the trial. Whether he said it in the deposition, it's not in the courtroom.

THE COURT: Okay.

MR. KISE: So if they are satisfied with their adjusted values, I'm not conflating the concepts of materiality and reliance, your Honor, respectfully, but they are interconnected. nd I don't think there's a bank that doesn't want to have the federal regulator standing on top of them for the rest of their existence that would ever testify, we deem something to be material, but we went ahead anyway. It's not plausible to conclude that.

So there's no even theoretical argument that the approvals, the rates or terms, would have been any different because the banks own analysis and rationale demonstrates that it wouldn't. nd so the ttorney General cannot simply come along an substitute her view of what's material and say it's material.

nd I'm just going to use the 2014 year as, you know, we went through each year, but I'll just go with the

2014 year. You could see from the highlighted language, approval of the various credit facilities; Doral, Trump Chicago, Trump Old Post Office, are being recommended based on, we have three items listed there. The first is the financial strength of the guarantor. If you'll notice that language that is so pesky for the ttorney General that they don't want anyone to pay attention to, "on an adjusted basis" -- we're gonna flip over to the next slide so you see what that means. On an adjusted basis the financial strength of the guarantor. It doesn't say on basis that he told us. It says on our basis, on an adjusted basis. Mr. Haigh testified repeatedly, I think the Court, frankly got tired of hearing it over and over again, that yes, those are adjusted numbers.

The other two factors which are very important, particularly in this context, are the operating experience and the Deutsche Bank relationship. Remember, President Trump was brought into the private bank because as a whole -- you have his testimony -- as a whole, as a bank, as an institution, they believed that this would be a valued customer to them; this relationship would be valuable to them. nd as the record reflects and as history establishes, they were right. He was a valuable customer for them. He made lots of money for them. They got deposit relationships. nd it was only because he became President

of the United States, and that created all sorts of political complications, that they ceased doing business with him at that time.

THE COURT: Is there any evidence that they still do business with him one way or the other? I don't know.

MR. KISE: I don't believe so, because of the testimony you heard about when he became President, it got elevated to the management and they were concerned about the navigating politics of that.

If you look at the credit memos where you see the numbers, and this goes back to my point about the "real world" versus the " ttorney General world." If you look at the net worth numbers each year, just in 2014 here, they looked at the 2012 and 2013 numbers. nd in 2012 you have the client reported net worth of 4.559 billion and you have the Deutsche Bank adjusted net worth of 2.436 billion.

Similarly, in 2013 you have a client reported 4.978 billion, and the Deutsche Bank adjusts the number of 2.645 billion. So contrary to what the ttorney General maintained in their opening, and has maintained throughout, there is a world in which a difference of that magnitude of $2 billion isn't material, is not material, and it's the real world. It's the one in which these loans were negotiated, executed, consummated successfully.

Same is true, if you flip over to the next page of

the 2014 credit memo. You see the Deutsche Bank valuation and the client valuation. nd again, there is 1.5 to $1.7 billion differential -- 1.5. We'll call it 1.5, differential between the client reported valuation and the client reported net equity, and the Deutsche Bank valuation and the Deutsche Bank adjusted net equity. nd as we saw from the two slides before, and as we know from Mr. Haigh's testimony, the numbers that Deutsche Bank relied on, their numbers, their own numbers, and they were satisfied with these wide differentials.

Just briefly on materiality, two more points. William Kelly, the General Counsel of Mazars, testified that "Mazars never determined that there were any material discrepancies with respect to the Statement of Financial Condition -- Statements of Financial Condition that it prepared for President Trump from 2011 to 2018."

Mr. Larson, an appraiser from Cushman & Wakefield, who you know I have some question as to his veracity, but nonetheless, he certainly testified, the ttorney General's own witness, that there was absolutely nothing to prohibit President Trump from conducting his own valuation of his property and the valuations never needed to be conducted by an appraiser.

So when you couple that testimony, and bear in mind that all of the witness testimony we are talking about are

ttorney General witnesses, they are not even our witnesses. None of them have done anything to establish materiality. nd this point has been ignored by the ttorney General, because as I began, they are relying on your determination and their view that, well, the numbers are so large it must be material. But materiality is measured in the real world by reel participants. In this case the banks that came before this court. There's no evidence of materiality, and the claim, on that basis alone, fails.

I'll talk briefly on insurance fraud. First of all, in our view, there's no evidence that the SOFCs, were material to the underwriting decisions. nd importantly, there's no evidence of any false written statement submitted to insurers. Ms. Markarian testified that llen Weisselberg allegedly told her SOFC values are based on appraisals. Mr. Holl, H-O-L-L, testified about certain verbal representations during a meeting, but he couldn't attribute any statement to any specific person, and therefore, you can't hold defendants liable, in general, but there's no false written statements to insurers, so those claims fail.

Conspiracy. Conspiracy requires an agreement, most importantly. The heart of any conspiracy is agreement. n agreement between two or more parties, an overt act in furtherance of that agreement, the parties' intentional participation in the furtherance of a plan or purpose, and

resulting damage or injury. This is the bacus Federal Savings Bank case, 75 D3d 472. We also cite the Court to the Robinson case, 259 D2d 280.

So here, there is no proof whatsoever of any agreement to commit a criminal act. The agreement to prepare and submit SOFCs is not an agreement in and of itself to commit a criminal act. nd there's no evidence of any intentional participation in any plan/purpose in furtherance of a criminal act.

There is also no evidence of resulting damage or injury. s I began, there are no victims here. There's no fraud. There's no complaining witness. There's no defaults, there's no later missed payments. These are all profitable transactions.

There's no evidence of agreement. The ttorney General's star witness. I know that the ttorney General says, no, Michael Cohen is just a small part of our case. Really, it doesn't matter. Right on that screen, Michael Cohen was featured. They played his testimony in the openings. Donald Trump told me to do , B, C, D, E, F G. He was showcased. Now the ttorney General, herself, retreats from his -- no other way to describe it -- pathetic performance. I mean, he is not credible. He admitted to perjury. In fact, I think -- I didn't go back and count -- I think he lied, he admitted to lying in just about every

court he's ever appeared in.

Importantly, he finally admitted, after Mr. Robert's cross examination, that President Trump never told him to inflate the statements. He said on redirect, and this I think is the most astonishing part of Mr. Cohen's testimony, that somehow or another President Trump speaks in code.

I mean, you saw him on the stand. I don't think when he was addressing Mr. Wallace, or talking about the ttorney General, or talking about the allegations, or anything else, this is not a man that speaks in code. I could assure you personally, this is not a man that speaks in code. nyone that has been around President Trump for more than 15 minutes knows you will know what it is that he wants, and you will know exactly how it is that he intends for you to get there. This is not someone that speaks in code.

So the idea that Michael Cohen tried to rehabilitate himself on redirect after demonstrating he lied and lied and lied, well, he never really told me. He just speaks in code, is preposterous.

THE COURT: Can I bring up something not in the record, but a matter of public knowledge? I think the perfect call with Zelenskyy about the military aid, there might have been code rather than straightforward talk.

MR. KISE: I don't know. That's a political issue that really has no bearing on anything in the courtroom, and I certainly don't know the facts or circumstances of it. nd I hope, sincerely, that that is not bearing on the Court's mind when it comes to the testimony. I know it's not. I know you were making a point, but that's a completely different context. nd here the only proof of agreement that they presented to the court was Michael Cohen.

THE COURT: Okay. I understand. I only base my decisions and rules on what's in the record, and that clearly was not, so okay.

MR. KISE: There's no testimony to support the ttorney General's claim that President Trump directed anyone to overstate this SOFC values. I mean, Cohen said affirmatively, he did not direct him to overstate the values. nd I'll just touch previously on the other only other statement that's even come close to this issue in the record, is the statement that the ttorney General attempted to get in through Mr. Birney about what llen Weisselberg allegedly told him. Well, as you know from our submission, that statement is inadmissible because until -- unless and until the ttorney General proves a prima facie of conspiracy, without that statement, which they haven't, because they haven't demonstrated agreement over the various

elements, then that statement doesn't come in.

Even if it came in, that statement, alone, is not proof of any agreement or any criminal act. The statement is purportedly, "Mr. Trump wanted his net worth to go up." Well, that, on its face, is not evidence of guilt or criminal conduct.

I think I believe President Trump himself said, "Well, who doesn't want to it go up?" I mean, you are going to tell people, "I would like it to go down." You know, I would like it to go down. The statement itself proofs nothing, even if it's admissible, which we believe that it's not.

Briefly, on two points about specificity, because we argued the criminal statutes. The ttorney General has failed to establish individual claims against each defendant. There's no specific proof of liability, specific conduct. I mean, look at Seven Springs, DJT Holdings, DJT Managing Member, Trump Organization, Inc. and LLC. The parties to the loans and the guaranty are very specific parties. They are set forth in the governing documents. So Seven Springs didn't prepare an SOFC or certification, DJT Holdings didn't, Trump Org, Inc. did not, Trump Org, LLC did not. The trust did not prepare and submit the SOFCs at the loan inception, at least. nd so there's no separation of any kind. None of the defendants are specified as to the

insurance fraud claim. It's just simply insurance fraud and defendants. nd the ttorney General cannot simply just conflate all of the defendants together. There's no basis in the record to disregard the corporate forum. nd the ttorney General has failed completely to attribute specific criminal conduct to specific defendants, which is the statutory burden.

They've also -- the ttorney General has also failed to establish specific defects. So the ttorney General's position which, you know, we disagree with, but their position is is that each SOFC submission or certification constitutes a separate act. But there's no actual evidence specific to each act.

The ttorney General, just in the record, has conflated the 2011, 2021 period without specific proof, year by year. There's no specific delineation as to each defect year by year. So the evidence has sort of wandered, um, I think some of the media has observed this, that each day we move from the 2014 Statement of Financial Condition to the 2013 spreadsheet, to a 2016 e-mail, back to a 2012 document. There's -- it's just sort of this meandering presentation, which at least where I'm from we call it a spaghetti method. You throw it all up on the we'll and let's just see what sticks, but there's no attempt to establish the materiality of each alleged defect or each separate SOFC, or each

separate certification. nd the ttorney General cannot simply conflate all of this together. There's no basis in the law for establishment of criminal liability against any individual defendant without a specific delineation.

nd so the failure to completely to attribute specific criminal conduct to a specific SOFC and a specific individual defendant, and a specific certification and a specific individual defendant, is fatal to their claims.

Disgorgement. I'm only going to say this once for the record. We do not believe, as you know, that it's available under 63(12) or the underlying statutory claims. Even if it's available, though, we do not believe the evidence has established that any gains or ill-gotten, meaning there's no demonstration that there's a causal link between the purported gains to defendants, and the purported fraudulent conduct. nd I cite to the court the JP Morgan Securities case, 91 D3d 226, which unfortunately was reversed on other grounds. I'm not sure what the grounds are, but that case stands for this proposition, that the disgorgement must be causally connected to the violation.

There's no evidence the loan approvals, the terms or rates, would have actually differed. nd the disgorgement must be directed at ill-gotten gains for recompense of investors, or some entity other than the prosecuting agency. That's the ccess, -C-C-E-S-S, Point

Medical case, 106 D3d 40.

So here what you have is no victim, no complainant, no loss, no nothing, and a request for disgorgement based on ill-gotten gains that haven't been established to be, in the record, ill-gotten, all directed at the agency, the prosecuting agency, the ttorney General. There isn't anything to recompense.

I'll bring up briefly, for context purposes, the statute of limitations, because I think it's appropriate here in the discussion of the disgorgement.

ny transactions closed before July 13, 2014, are not subject to any sort of financial disgorgement. They cannot be included in the calculation. So the only remaining loan claims would then relate to the OPO loan and/or the 40 Wall Street loan; that setting aside the issues as to the application of the tolling agreement. But just as a broad proposition, prior to July 13th, 2014, that's a hard stop. So there cannot be any disgorgement as to transactions closed before July 13, 2014 loan transactions or otherwise.

They cannot seek disgorgement as to contracts awarded to the OPO contract, the Ferry Point contract before July 13, 2014. nd this chart, which you have seen before, sort of lays that out. It lays out the relevant dates. The Seven Springs loan was in July of 2000. The Trump Park

venue loan was July 2010. The Ferry Point contract was 2012. The OPO bid selection approval was 2012. The Doral loan was in 2012. The Chicago loan was in 2012. The OPO contract and lease was in 2013. So all of those long well predate the 2014, July 13, 2014, date.

So then the only other transactions as I mentioned that are even theoretically viable, setting aside the tolling agreement, would be the OPO loan of ugust 12th, 2014, which is just across the July 13th line. nd then the 40 Wall Street loan on 2015. gain, those transactions, because there hasn't been materiality, hasn't been the requisite establishment, we would say there's no basis to award any disgorgement. They are particularly based on the disgorgement case law that I referenced. There is nothing to recompense. But in all events, those transactions would be the ones only theoretically viable.

THE COURT: What if a loan was closed, money transferred prior to the statute of limitations cut off, but the loan was still outstanding and interest was affected, and let's assume that the loan was obtained through fraudulent means, or the particular interest rate was obtained through fraudulent means. Wouldn't the borrower still be benefitting after the statute of limitations bar?

MR. KISE: Um, no, because you now have to look at the certification, as the ttorney General has requested

that you do, on a free-standing basis. What were the impacts of that certification. nd I have a slide on that, but I'll certainly answer your question, your Honor.

What would the impact of that certification be on the loan terms itself? What would change? What difference would there be? We can't -- we can't use the concept of, well, I could look backwards to defeat the statute of limitations. I mean, that's why, respectfully, we believe that the First Department said what it said. I know there's a disagreement; that will be the subject of later proceedings, but that's why when you are dealing with a loan transaction, a transaction of this nature, you have to look at it at the time the agreement is consummated. nd all the subsequent certifications, whether they are false or not, we say they are not, but even if they are, they don't carry with them a corresponding damage component because the bank -- the die is cast. I mean, the deal is done and it's moving forward.

nd to the extent that there is an opportunity to alter the trajectory, that would be pursuant to the express terms of the loan agreements, which you have in the record. The bank and the borrower contemplated expressly in that agreement the exact scenario that the ttorney General is now bringing before this Court, which is what happens if this representation isn't met? What happens if that

representation isn't met? ll of that is the subject, the core of the agreement between the parties, and for the ttorney General to interject herself into the private marketplace to this degree is both startling and, and, you know, frankly, frightful, because the parties themselves are in the best position to determine how they want to proceed with one another.

nd if they anticipate specific circumstances, then they anticipate those. nd if the bank is defrauded, they are perfectly capable of coming to the ttorney General to affording themselves to the remedies in the documents. But we don't get to, as ttorney General, ten years later rewrite the terms of a contract and say, "Well, I know that Deutsche Bank didn't believe that this was material." "I know that Deutsche Bank didn't view this these vagaries and the statements and the valuations as material or important, but we do." That's a substitution of judgment which is based on total speculation. There's no record of any ill-gotten gains. There's no testimony or evidence the approvals, the terms or rates would have been different.

The ttorney General is ignoring the multiple factor underwriting analysis. The ttorney General is ignoring the realities of marketplace. There's not even any proof that the loans, based on their concocted theory, would have ever been agreed to higher rates, meaning, that the

parties would have come to some agreement.

THE COURT: Hold on. For present purposes, I'll agree with you, without prejudice, that the certifications, the subsequent year certifications would not change the terms of the loan. But my question is -- it's a hypothetical, almost; a rhetorical question.

If the loan was obtained pre-statute of limitations and under false pretenses, but the borrower is still benefitting post-statute of limitations based on the interest rate, I don't know, maybe disgorgement is possible for that. I'm not taking an official position. I'm just raising a question.

(Continued on the next page.)

MR. KISE: Well, you know our position. There is no way to unwind that analysis, particularly here where the bank itself is telling you -- well, strike that.

The bank hasn't told you that anything would have been any different. The bank hasn't said, wow, if I had known that certification wasn't accurate, I would have acted differently. Most likely what the bank would have done is they would have determined, okay, I have got performing loans. Banks don't want to foreclose on loans. Bank don't like to declare defaults. Banks like, what, making money off of performing loans, that's the business they are in. So if the loan is performing, if the collateral is otherwise secure, both things that are in the record here, if there is no risk or little risk of actual substantive default. Then it is up to the bank. It is up to the private parties to determine, I think in some years actually based on the Deutsche Bank analysis, if we were to go back and look year by year, which I won't, but I think in some years maybe even on our slide.

Let's just look at that briefly.

Here. So right here in 2012 Deutsche Bank credit memo. Their own analysis, their own adjusted value has the net worth at 2.436 billion. So by their own analysis they would say, oh, well, he is not meeting the threshold. That's their own analysis. They obviously

didn't complain about it.

In fact, not only did they not complain about it, they approved the loans and the credit facilities. They continued doing business year after year after year after year.

nd so again, I am back to, this is what happens in the real world, not the land of make believe, not the ttorney General's world.

THE COURT: By the way, this is sort of an offhand point. The chart that you were working with, the fact that the defendants or Trump Organization put X dollars, as claimed to have a value of X dollars, the fact is that the bank said, no, it is X minus Y, it is not 4 billion, it is 2 billion, maybe that means they don't trust him.

MR. KISE: It means what Mr. Haigh testified to, they don't trust anybody. No one trusts anybody. What bank would? They will not be in business for very long, and the regulators will be all over them. Their job is to conduct the exact analysis you see here, particularly in the commercial sector. They can't just say, oh, well, that's very nice President Trump, you are worth $10 billion, $50 billion $5 billion, whatever number, here, how much money do you want, let me take it out of my pocket. That's not how any commercial lender works. I

think we can all speak from personal experience on dealing with borrowing for homes, cars, anything on an ordinary sense. No lender takes your word for it. That's why we have credit reports and we have all of these checks and balances. The whole purpose is to make sure that at the time the loan is consummated, whether it be a personal loan for a home or a giant commercial loan that is at issue here, that the parties have developed an understanding with each other as to the relative pros and cons of the deal, and that's what they have done here.

nd Deutsche Bank, yes, they discounted it heavily. nd back to where I began, they -- they determined that a $2 billion differential was not material to them. So it is not really a matter of not trusting President Trump or the Trump Organization, it is a -- I think if you were to look at any of the deals in the commercial real estate center, you are going to see these wide disparities. They are looking at it from a different purpose as well.

So there is no proof that the OPO would not have been made, the OPO loan. There is no proof that the OPO loan terms would have differed. There is no proof that the 40 Wall Street loan would not have been made. There is no proof that the 40 Wall Street loan terms would have differed. There is no proof in the record that the OPO or

Ferry Point contracts would not have been afforded. nd there is no proof that any of the certifications could have possibly impacted these rates and terms.

Now, you have done me the favor of foreshadowing exactly what I was going to put up. Which is, we had this colloquy, I believe it was yesterday, or Monday.

The G's -- the ttorney General's only remaining theory relates to these certifications, but there is no proof in the record that post-closing certifications could possibly impact approvals, rates or terms. nd you yourself agreed, at least conversationally, you will have to make the ultimate determination, but I agree with your logic that a certification in 2017 doesn't affect anything directly about the original loan, how it was negotiated, how it was finalized.

So the ttorney General ignores all that. The ttorney General also completely ignores the guaranty and step down -- the step downs and the guaranty and the elimination. You know, with Doral and Chicago loans, which still feature prominently in their expert's opinion, the evidence establishes that the Doral guaranty went down to 10 percent and the Chicago guaranty was eliminated. So at that point there is no, even, theoretical impact of the certifications, because there is no longer any guaranty.

nd the guaranty is at 10 percent, so the net worth covenant was at 250 million on Doral and not 2.5 billion. nd so therefore, I don't think there is any allegation, even from the ttorney General, that President Trump's net worth fell below 250 million at any point.

So there is no possible basis, even theoretical, for disgorgement on the Doral or Chicago loan after the step down or the elimination of the guaranty.

So Mr. McCarty's -- and I am closing here to be mindful of the time. Mr. McCarty's analysis is, I don't want to be pejorative and use the word comical, but it is disconnected from reality. He develops his own absurd construct. He ignores the bank officer testimony. He ignores the plain language of the loan agreements, never looks at the step downs, never looks at the elimination, never looks at the default rate. He simply substitutes his judgment for that of the sophisticated counterparties who negotiated this with high-powered counsel, lots of back and forth.

So the ttorney General is just using Mr. McCarty, and apparently he is willing to be used in this regard, to back fill a gaping hole in the case, that there is no ill gotten gain. So we can't prove it so the ttorney General decides let's just make it up.

So these cases you heard us cite before, I will

cite them for the record now.

The Gathers case 242 .D.2d 506.

The Quinn case 203 .D.2d 444.

The Ortiz case, which you heard about many times. nd I think you probably think that's my favorite. I do like that one, because the Ortiz case frames it well. You can't have an accident reconstructionist when you have eyewitnesses to the accident testifying and saying X. The accident reconstructionist is not allowed to come in later and say no, no, no, no, this is what really happened.

The Ortiz case is found at 19 .D.3d 239.

nd then the last case I'll cite to the Court is the 91st Street Crane Collapse Litigation. 154 .D.3d 139.

ll of these cases stand essentially for the proposition that experts opine on the evidence. They don't manufacture the evidence. They don't substitute their opinions. They can't contradict facts that are in the record.

So McCarty simply adopted this Court's position on summary judgment without -- assuming facts not in evidence. Didn't give any -- pay any heed to what the Deutsche Bank testimony was, what the Ladder Capital testimony was. Or more importantly here, what it was not, because there is no indication, as I have said, that

anything would have been differently. So Mr. McCarty offers only to substitute his judgment for the judgment of the sophisticated private actors who underwrote and negotiated what, without question, are highly successful business transactions. It is not disputed.

The Frye standard and the cases that I cited simply do not permit this kind of expert by speculation. There is nothing in the record to suggest the banks would have denied approval, altered the terms of the loan based on additional information. nd this is important, you heard me say this before, because the ttorney General never asked them.

nd it is fair for the Court to conclude that they didn't ask because they knew they were going to get an answer they didn't want. So they decided, let's roll the dice with Mr. McCarty.

Mr. McCarty, you know one thing, it is interesting, maybe even more than one about his testimony, is in response to, I believe it was a question from the Court, he himself testified he could not -- he couldn't state with any reasonable degree of certainty as to what the banks actually would have done. The Court, you prompted him:

"It is a yes or no question, are you certain they would or would not have, whatever, offered a loan on

those terms. re you certain?

THE WITNESS: It is a hypothetical question. I can't be certain."

That's exactly the point.

Mr. McCarty even confirmed there was no violation of the 40 Wall Street loan covenants. The colloquy that ensued on cross examination:

You would see here that the covenant that it describes is that the key principles must maintain a net worth equal to at least 160 million and a liquidity of at least 50 million.

" NSWER: That's correct.

THE COURT: I think principals is spelled wrong.

MR. KISE: It is. It is. I think this is in the record though, sorry. It is though, I noticed that.

"QUESTION: nd the key principal described in this document is Donald John Trump?

"That's correct.

"QUESTION: Do you have any reason to believe during the life of this loan Mr. Trump didn't maintain a net worth equal to at least 160 million and a liquidity of at least 15 million?

" NSWER: No. I don't think there was any violation of this covenant."

So back to your -- the question you posed about

certifications and the covenants themselves, I mean, with the 40 Wall Street loan, there is not even any question in the courtroom presented that President Trump always met those thresholds. lways. So there is no impact, it is not even theoretically possible that there would be -- would have been any impact on the rates, the terms, the approval process, none of it.

So in sum, we submit that the ttorney General has failed to establish a prima facie case. There is no proof of intent. There is no proof of materiality. There is no specifically attributable contact to each defendant. There is no specifically identifiable conduct with respect to each SOFC and certification each year. There is no entitlement to disgorgement.

nd what we have here is the ttorney General seeking to impose liability for profitable transactions, to substitute her judgment for that of the banks. nd frankly, her judgment for that of a person who has been involved in the commercial real estate industry for 50 years.

I am not sure about the Court but I know if I had money to invest in commercial real estate and my choices were Donald Trump or ttorney General James, respectfully, I would certainly go with Donald Trump, because I know I am going to make money there. I don't

know about the ttorney General. Her opinions in the real world don't matter. What matters in the commercial private sector is what do these parties have to say.

nd the ttorney General is not pursuing any wrongdoer. She is pursuing a political opponent. I am not speaking out of turn or politicizing it, but he is a political opponent. There is no fraud. There is no victim. nd respectfully, Your Honor, there is no liability as to counts two through seven, nor any basis for disgorgement.

Thank you.

I believe Mr. Robert has something.

THE COURT: Okay, Mr. Robert.

MR. KISE: If I have left him time.

MR. ROBERT: Can you hear me, Your Honor?

THE COURT: Yes.

MR. ROBERT: Good morning.

THE COURT: Good morning.

MR. ROBERT: I will be brief, as is usually my custom here. But I don't want my brevity to be misconstrued as a lack of importance that your decision will have on the impact of my clients in particular and their future. Or any indication of a lack of how strongly we feel that directed verdict should be granted in favor of my clients.

I think it goes without saying that obviously I join in Mr. Kise's arguments on behalf of Eric Trump and Donald Trump Jr. that we request a directed verdict in this matter.

What I want to spend my few minutes discussing is, what I believe the New York ttorney General has not proven as to my clients. nd since they have rested their case, therefore we believe we are entitled to a directed verdict.

What I believe is clear is that the ttorney General has not proven that my clients were involved in the creation of the Statement of Financial Conditions. They were not involved in the preparation of it; in assembling the backup to it; in reviewing the supporting data spreadsheets to it; in performing the calculations or, quite frankly, in determining the methodologies used in the Statement of Financial Condition.

I know throughout the course of the trial there were exhibits, and we are going to talk about those this morning. But respectfully, the ttorney General is so desperate to make a connection between, for example, Eric Trump and the Statements of Financial Condition, that they actually used an e-mail from 2010 that attached an ND that wasn't signed that had a reference of a Statement of Financial Condition, I think it was in the second

paragraph, in the unsigned attachment to show that somehow he had knowledge going back to 2010 of the SOFC.

There were also several other documents that were shown to Mr. Trump which were passing references to the SOFC. But let's not talk about what I am saying, let's talk about how Eric Trump answered the question about that.

If we could put on the screen Mr. Eric Trump's testimony from November 2, 2023, page 3328, starting at line 20.

THE COURT: Just one question. few moments ago you said, "Mr. Trump."

MR. ROBERT: That's why I am being clear now I am going to call them Eric Trump, Donald Trump Jr. and President Trump. Those will be the three words I use.

THE COURT: Okay.

MR. ROBERT: This is Eric Trump's testimony.

" NSWER: I think where we are getting tripped up, is I clearly understood that I sent notes to Jeff McConney. I worked with him almost every single day. What's maybe not registering is the difference between sending him things that were used for financials and things that were used for a Statement of Financial Condition. Somebody from accounting would ask me something, they had ask me details of a project, and I

would respond. I don't think it ever registered that it was for a personal Statement of Financial Condition. It was just a detail that was irrelevant to me."

Based on testimony like that, I respectfully submit that the ttorney General cannot show any intent for the remaining causes of action as relates to Eric Trump.

s to Donald Trump Jr. let's look at his testimony from November 1, 2023, page 3213 starting at line 21:

"QUESTION: Did you ever perform work on the Donald J. Trump Statement of Financial Condition for any year.

" NSWER: Not that I recall, no.

"QUESTION: No specific knowledge, sir?

" NSWER: No."

But obviously, parties to a case have an interest in the outcome of the case. Your Honor is able to deal with credibility issues. But let's look at what the other witnesses you heard from so far had to say about the involvement or, as I'll respectfully submit, the lack of involvement of my clients in this case. lthough I know Your Honor hates arguing in the negative, but here I am going to need to do a little bit of that to show, respectfully, what it is that we believe the People have

not been able to prove.

s to Eric Trump, let's start with one of the earlier witnesses in the case who was Camron Harris, from the Whitley Penn firm, the current accountants for the Trump Organization. nd let's turn to Mr. Harris' testimony of October 4, 2023, page 455, line nine:

"QUESTION: I asked you if you had any meeting with Eric Trump that discussed the Statement of Financial Condition.

" NSWER: No, I did not."

Mr. Harris continuing on page 458, line 19.

"So while not specifically, did you have any meetings in which the Statement of Financial Condition would be a part of the discussion?

" NSWER: I did not have any meetings with Donald Trump Jr. or Eric Trump in regards to the Statement of Financial Condition."

We then can move to the testimony of Donald Bender, who you heard ad nauseam was the long-time accountant for the Trump Organization, had been paid to his firm millions of dollars, representing them for years and years. Let's go to Mr. Bender's from October 5, 2023. Page 526, line three:

"QUESTION: Mr. Bender you never spoke with Eric Trump about his father's Statement of Financial Condition,

correct?

" NSWER: I may have had -- nothing with the actual compilation of the report."

We then move down to llen Weisselberg. nd we know llen Weisselberg and Jeff McConney were the main players, for lack of a better word, in dealing with the Statement of Financial Condition. nd we have Mr. Weisselberg's testimony of October 10, 2023 at page 845, line 13:

"QUESTION: Did you rely on Eric Trump?

" NSWER: No.

"QUESTION: Not at all for any of the information contained in the Statements of Financial Condition?

" NSWER: Not me personally, no."

Now we know from the evidence that the ttorney General did submit to this Court that there were conversations between Eric Trump and Jeff McConney. But respectfully, they don't rise to the level of intent that the ttorney General needs to establish in this case.

So let's look at the testimony of David Mc rdle of Cushman & Wakefield, again a non-party to the proceedings, who can talk about Eric Trump's view of value, which again goes to the heart of this matter.

Let's go to Dave Mc rdle's testimony, which was

October 19, 2023, starting on page 1933, line 15:

"QUESTION: So two questions here. Toward the bottom of that long first paragraph it says "of course Eric Trump has lofty ideas on value and assumes 1,000 PSF, per square foot, is no problem. First, had Eric Trump communicated his understanding of what the values might be on this property?

" NSWER: Well during the course of this engagement, I did have conversations with Eric Trump. Some of it was about gathering the physical data that we just spoke to, you know, construction costs and building configurations and units. nd he did a great job of describing the physical nuances of the project. nd -- but importantly, you know, we ended up speaking about what they could sell for. nd you know, Eric loved this project. He thought it was very special. I didn't disagree with him. I think it is a very unique project and it would definitely appeal to high-end buyer -- to the high-end buyer interested in, you know, low rise attached housing with the amenities that this project might offer.

So he shared his thoughts. He thought it was very special and unique. nd at the time that $1,000 per square foot price point was what he thought was reasonable, you know.

" nd I am perfectly willing to listen. I think

its -- owners are a great source of information, but ultimately, you know, I have to come up with my own conclusions."

Eric Trump is not running away from the fact that this would have been a conversation he would have had with the appraiser. It doesn't mean that any of the conversations he had were nefarious or done for any ill purpose.

We can continue with Mr. Mc rdle on page 2034 of the same date:

"QUESTION: Would you agree that as an owner of the property Mr. Trump -- Eric Trump, is entitled to have his view?

" NSWER: Yes. We always seek out an opinion. Its fair to obtain their input."

So here we have another witness who was an impartial witness who didn't have a problem with what Eric Trump had done.

Now, we have heard ad nauseam about Michael Cohen. nd I agree with Mr. Kise that it appears that in every court he has ever testified in, he has lied. But there was actually something that even he couldn't lie about. That's on October 25, 2023, page 2328, starting at line one:

"QUESTION: nd you never discussed the SOFC

with Eric Trump, did you?

" NSWER: Not that I recall."

You know, the ttorney General has kind of thrown in this issue of some sort of an insurance fraud, which frankly I still don't understand. But let's look at the one witness that was brought in -- or one of the witnesses that was brought in to deal with it, as it relates to my client.

Let's look at the Claudia Mouradian transcript, which was played in court, but was taken on June 28, 2023. Page 124. nd I will read all three just for context, Your Honor. Line five:

"QUESTION: Did you speak to Donald Trump, Donald J. Trump?

" NSWER: No.

"QUESTION: Donald Trump Jr.?

"No.

"QUESTION: Eric Trump?

"No."

So so far we have gone through these witnesses and nobody -- and everyone has been consistent in what they have said about my client.

We then kind of dovetail into this issue of the certifications that were signed by Eric Trump. nd in a few minutes we will talk about the ones signed by Donald

Trump Jr. nd I'll respectfully submit to you that the ttorney General has failed to show that Eric Trump acted in an inappropriate way, in that as a senior executive in a large company, he relied on others to assist him in understanding whether the certifications were appropriate, and as Mr. Kise set forth, the certifications said that they were true in all material respects. Let's go to Mr. Eric Trump's testimony from October 3, 2023, page 3442, line eight.

Being questioned by Mr. mer:

"QUESTION: Now, we have just looked at three certifications you signed stating that your father's 2021 Statement of Financial Condition presents fairly in all material respects the financial condition of your father as of June 30, 2021.

Can you tell us what, if anything, you did to ascertain that the 2021 Statement of Financial Condition in fact presents fairly all material -- in all material respects, the financial condition of your father as of June 30, 2021.

" NSWER: I relied on a very big accounting office. I relied on one of the biggest accounting firms in the country. nd I relied on a great legal team. nd when they gave me comfort that the statement was perfect, I was more than happy to execute it.

"QUESTION: Did you personally review any of the methodologies used to value any of the assets in the 2021 Statement of Financial Condition; yes or no?

" NSWER: No."

I respectfully submit to this Court that there is no basis of which the ttorney General has laid out a prima facie case of remaining claims against my client, Eric Trump.

Turning to Donald Trump Jr. and his involvement, if any, with his father's Statement of Financial Condition.

gain, we start at the beginning with Camron Harris, his testimony, October 4, 2023, page 458, line 19:

"So while not specifically" -- Question -- or rather: "So while not specifically, did you have any meetings in which the Statement of Financial Condition would be a part of the discussion?

" NSWER: I did not have any meetings with Donald Trump Jr. or Eric Trump in regards to the Statement of Financial Condition."

gain, moving onto Donald Bender the next witness. October 5, 2023. Page 527, line 23:

"QUESTION: Mr. Bender, did you ever speak with Donald Trump Jr. about his" -- referring to President Trump's -- "Statement of Financial Condition?

" NSWER: Not that I recall."

Moving onto llen Weisselberg, October 10, 2023 testimony. Page 964, starting at line three:

"I believe you told me earlier Donald Trump Jr. was also a Trustee at this point in time?

" NSWER: Yes.

"QUESTION: What, if anything, did he do, to your knowledge, to determine the estimated current value?

" NSWER: I don't believe he did anything. It was -- it was done by the same people that did it for 25 years."

Going on to page 965, line 20.

"QUESTION: Did you tell Donald Trump Jr. during the time that you were both trustees how the values were calculated?

" NSWER: Not that I can remember."

We go back again to even Michael Cohen, who said the second thing that was truthful, which he could not deny. Page 2327, line two:

"QUESTION: Okay. nd you never discussed the Statement of Financial Condition with Donald Trump Jr., did you?

" NSWER: Not that I recall."

We then move to the Claudia Markarian transcript which, again, is from June 28, 2023. I don't need to read

it again to Your Honor. We dealt with it before. But it was: Did you speak to Donald Trump Jr?

nd the answer was "no."

So, again, moving to the certifications in Donald Trump Jr. as well. gain, these officers and directors of the company acted appropriately. nd as Mr. Kise outlined in his presentation, the ttorney General has failed to show any proof of intent and/or materiality. nd I think that goes, we have to look again at the testimony of both Mr. Trump -- Eric Trump and Mr. Donald Trump Jr. s the issue of reliability and what they presented to the banks and the certifications, I would refer you to page 3437 of Eric Trump's testimony, starting at line 17:

"QUESTION: nd when you executed these three certifications, you intended the bank to rely on the certifications; isn't that right?

" NSWER: I don't know what the bank does with the certifications. I certified something that I believe was accurate, and my lawyers told me that it was accurate, and our financial people told me it was accurate. nd that's absolutely accurate.

s to what Deutsche Bank does with a piece of paper like this, I have no idea."

We then have Donald Trump Jr. dealing with the

same issue. First at page 3238 of his testimony from November 2, 2023.

nd I apologize, Nate, I know I skipped and changed the order. I do that sometimes.

So we are going to page 3238, starting at line 25.

"QUESTION: Did you take any steps to assure yourself of this certification?

" NSWER: s with all of the certifications, as I think we discussed yesterday, I would have sat with the relevant parties, mainly in accounting, whether that's the Trump team and/or Donald Bender. I would have asked them if everything that is in here is correct. I would have likely also checked with our legal department to make sure that the conditions are met as it relates to anything I would sign for Deutsche Bank. nd if they assured me in their expert opinion that these things were fine, I would have been fine with that and signed offer accordingly.

"QUESTION: Is that specific to this particular certification, sir?

" NSWER: Well I think I probably would save us some time and say that's probably specific to all of these certifications, because I am sure I've signed dozens of these in my time as a trustee.

We then also go to Mr. Trump's testimony on page

3249, line 20:

"QUESTION: Correct, that you signed this certification with the intent that the bank would rely on it?

" NSWER: I don't know that they rely on it. I don't. I know a lot of bankers and they do their own due diligence. But I was fine saying this based on everything --

THE COURT: Not "saying this" -- "signing this."

MR. ROBERT: Thank you, Your Honor.

"I was fine signing this based on everything I had been told as per everything we have discussed yesterday, yes.

THE COURT: "Today." Not "yesterday."

MR. ROBERT: Let me try it again.

" NSWER: I don't know what that they rely on it. I don't -- I know a lot of bankers and they do their own due diligence. But I was fine signing this based on everything I had been told as per everything we have discussed today, yes.

So Your Honor, while the burden of proof is not ours, I respectfully submit to this Court that the evidence is clear that my clients had no real involvement in the preparation of the Statements of Financial Condition. The ttorney General cannot possibly prove

that they had the requisite intent necessary for the claims that are still the subject of this trial.

nd having now heard the testimony of witnesses, not just my clients, but also non-parties and people that have no vested interest in the outcome of this, I respectfully submit that there is no relief appropriate other than having a directed verdict in favor of my clients.

I think it is unfortunate that my clients have been dragged into what I'll say is a fight primarily between the ttorney General and their father. But nonetheless, we are where we are. But now the time has come, respectfully, that we need to put an end to it, and a directed verdict entered in favor of my clients.

Thank you, Your Honor.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

THE COURT: Thank you. ny other defendants have anything to say?

MS. H BB : I'll be brief, your Honor. If it's okay I don't need to go up over there.

I have full confidence in my team, and I join in all of their sentiments. I think they went through, in excruciating detail, why a directed verdict is warranted. Obviously I represent different entities, different individuals. nd we do join in everything that both Mr. Robert and Mr. Kise stated.

With that, I just want to highlight the fact that it is the burden of the plaintiffs to prove every element. nd while there has been a tremendous amount of noise in this trial for the past few weeks, I think that the law has to be what is held and what is examined here, and just the law.

There are elements that need to be proven against clients that I represent that were not proven. There was no intent. There was no proof of materiality. They are not entitled to disgorgement. Frankly, it was more of a press claim, if you ask me, because they couldn't prove it when they came in here. There was no bank that brought any claims against anybody that is a defendant in this case because there was no damage and there was no victim.

Further, the conspiracy to commit fraud is

completely ridiculous, and they have no proof of it in this trial. We have seen numerous people come up, but none of them, none of them showed a conspiracy. nd the only one that did, Mr. Cohen, who claimed to say that there was some meeting that never happened, that he never had proof of, committed perjury, lied under oath in this court, and made a mockery of the judicial system time and time again; that was their witness.

The minute he got off the stand, he was retracted and they retreated. nd I think that speaks volumes, your Honor, volumes. Ms. James stated that that was why she brought the case originally. She Tweeted it. I showed that Tweet in trial on my cross examination. nd now we have nothing, but have wasted taxpayers dollars.

So as I said, I believe they have -- I don't believe. They have failed to establish a prima facie case for their claims. I truly do want to encourage your Honor to please look at every individual defendant separately, individually. I think they are all entitled to their fair chance and not to be grouped in for some -- as I feel that the G, frankly, has done and has failed to prove their case as a result.

So, again, on behalf of my clients, I'm also asking for a directed verdict at this time. Thank you.

THE COURT: Just one question, you said something

about Michael Cohen retracting his statements after he left the witness stand; is that correct?

MS. H BB : Michael Cohen, as we know -- he has a PR play. I could go on and on and on. He has gone on TV. He has gone on podcasts discussing his testimony here. nd, you know, quite honestly it's irrelevant, because I believe what happened in court was the most relevant. He admitted under oath that he perjured himself, and that speaks volumes.

THE COURT: My point is, if it was after he was a witness --

MS. H BB : That's not relevant. To me what's relevant is what happened here, and, frankly, said it all.

MR. KISE: s predicted, I wound up on his podcast, as predicted.

MS. H BB : I used to be the only one, but he got in on it.

THE COURT: Opposition to the motion for directed verdict?

MR. W LL CE: We certainly oppose the motion, your Honor. I really will try to be brief.

THE COURT: This is past or normal break time.

MR. W LL CE: Should we take a break at this time or just keep going?

THE COURT: It depends on how long you are going to

be.

MR. W LL CE: I'll try to be brief, your Honor. I will just say that the presentations we just heard sound like closing arguments. They sound actually like the presentations the defendants made at summary judgment. They are not a basis for a directed verdict. nd I know that Mr. Kise, through all the legal standards he went through, failed to lay out the standard for a directed verdict, which is that when the Court is considering this motion you have to afford the ttorney General every inference which may be properly drawn from the facts presented, and the facts must be considered in a light most favorable to the plaintiff. So that's in the Szczerbiak case, 90 NY2d 553. The defendants don't even come close to meeting that burden.

I would just note that it was two weeks ago the defendants sought a directed verdict after Mr. Cohen's testimony, was denied because there was a courtroom full of evidence. We've moved on to the overflow courtrooms. The evidence has only been supplemented since then, so it is still appropriate to deny a motion for a directed verdict.

I will walk through it at a very high level, your Honor. nd I guess I will start with materiality, which Mr. Kise spent a great deal of time on.

Materiality, I will just note the, false business records claim does not have a materiality standard. The

question is just whether this document is false and was done with criminal intent. So for those claims there is no materiality standard.

For the false financial statement requirement, the question is, is the financial statement on its face materially misstated. nd I actually do believe that your Honor did decide that during the course of the summary judgment proceeding.

On insurance fraud, it is questions as to whether the misstatements are material to the insurance transaction. I think the evidence establishes that. I will say, though, because we are not trying to prove bank fraud. We are not -- it's not a larceny claim. It's not a federal bank fraud claim, which I will also note does not actually require a loss by the bank. It is merely based on whether false information is presented in an effort to obtain credit from the bank.

But I would still argue that these statements were material to the bank and that the evidence presented so far proves it. They are material because the banks asked for the financial statements. The banks require them to be certified by the defendants. The information was then evaluated and included in the underwriting. The fact that it was not the end of the analysis does not mean it's not material. Materiality questions whether or not it

influences someone's decision. I would also add there are multiple statements here that are potentially false. We have potentially false financial statements, the actual Statements of Financial Condition themselves. We have the false certifications. We have the false representations to Mazars. nd on those, Donald Bender was very clear on the materiality of those statements. He said that the Mazars would not have issued the Statements of Financial Condition if they did not get the representation letter from The Trump Organization.

That was reiterated by Mr. Kelly who said that they decided to pull the statements when they found out that The Trump Organization had not met its requirement to provide them with all information, as had been represented in those statements.

Now, I would go beyond that, your Honor, and just add that the law allows for the creation of a false financial statement to be accomplished by having a third party create that statement in someone else's records. So that means that to the extent people are directing folks to take steps, that creates the false records that are in the Trump Organization's own files; the false records that are in the files of Mazars; the false records that are in the records of Deutsche Bank; the false records that are in the files of the City of New York.

I will also focus briefly on intent. On intent, I would just say that the defendants' position seems to be that if they get on the stand and say, "I had nothing to do with the statements", or more commonly, "I don't remember having anything to do with the statements", then intent is disproven; that's certainly not the law.

s your Honor highlighted in the lamo decision, which Mr. Kise also flagged, a mens rea element is typically proven by reference to the facts and circumstances surrounding the case, and that's 174 Misc 2d 501; that idea is repeated elsewhere in New York law.

Marine Midland, 120 D2d 122 stands for the proposition that fraudulent intent by its very nature is rarely susceptible to direct proof, and must be established by inference from the circumstances surrounding the allegedly fraudulent act, and that's a Second Department case, but the standard is the same in the First Department as set out in Setters, which is at 139 D3d 492 at page 493.

This is also shown in plenty of other fraudulent cases, including in the Second Circuit, in the Powers case at 57 F3d 176 at page 184, which establishes that intent can be shown through a motive to commit fraud and a clear opportunity to do so. nd where the mode of evidence is not apparent, it can be demonstrated by proving circumstances indicating conscious behavior by the defendant.

Now, all of this is just to say that intent is not proven by admissions alone, and that intent is something that the Court should -- is going to infer from the evidence, which makes it a poor prospect for a decision on a directed judgment, as opposed to at the close of evidence and at the close of the trial.

I will say that here we think we have ample evidence to demonstrate the intent of the defendants. The primary argument from Mr. Kise and Mr. Robert seems to be that the individual defendants were not involved in the preparation of the Statements of Financial Condition and had no idea what they contained.

Well, first off, that's obviously not true from Mr. Weisselberg and McConney. No one's talked about them at all in these presentations. nd so there's also almost no defense of their actions whatsoever in what I just heard. That, in turn, means that each of the entity defendants that they were working on ban of are also liable.

nd with respect to the three Trump defendants, I will start by reminding your Honor that this is documents case, and each of the three defendants signed documents saying that they were responsible for the preparation and fair presentation of the statements.

Now, the "fair presentation of statements", that's at the heart of the case, and that's the graveyard the

defendants keep whistling past, is the finding by this Court, on summary judgment, that the Statements of Financial Condition were false and misleading.

The Court has also issued final, binding rulings that the values of individual properties were inflated, and that includes Mar-a-Lago, the triplex apartment, Seven Springs, 40 Wall Street, berdeen, the Vornado property and the golf clubs. Those standings -- those findings stand, and are not a basis for reargument, because we are having a trial.

THE COURT: Let me ask you a personal question.

MR. W LL CE: Sure.

THE COURT: Do you file tax returns?

MR. W LL CE: I do file tax returns.

THE COURT: Do you have an accountant to do that for you?

MR. W LL CE: I do not.

THE COURT: You're like me.

MR. W LL CE: I did when I was a partner at a law firm. Now that I work for state, I don't have an accountant.

THE COURT: Do you rely on your accountant -- did you rely on your accountant at that time?

MR. W LL CE: I did.

THE COURT: Okay. So the defendants here relied on

their accountants, highly paid accountants, and the highly paid attorneys.

MR. W LL CE: Certainly, but I'm also responsible for what is submitted in my tax returns. I was not here when it happened, but I believe that was the subject of some discussion with Mr. Cohen during his cross examination.

The other issue is the statements, on their face, say the values are being prepared by Donald J. Trump. They are being prepared by the trustees. It says in conjunction with their accountants, or with their staff, but they are taking responsibility for it. They are then certifying to Mazars that they've taken responsibility for it. They are certifying to the bank that they are true and accurate. So it's not a case where it's just a question of, you know, a document that went out and went to an accountant. But it's also true that if I, in the preparation of my taxes, give me accountant false information, if I give him fake donations that I didn't make, I'm liable for that fraudulence. I'm not relieved of my responsibility because I handed it off to an accountant before I did it.

So I think there is plenty of evidence here to establish intent. I think in particular with Eric Trump, the idea that he said he wasn't involved. He got a direct e-mail from Mr. McConney saying I'm preparing your dad's financial statement. Here's the manner in which I'm

calculating Seven Springs, let's talk about it. Mr. Trump says, "I don't remember that", or "I can't recall", that's something for your Honor to weigh.

THE COURT: Eric. You are supposed to say Eric Trump, not Mr. Trump.

MR. W LL CE: I apologize. Because Eric Trump created that statement, was responsible and involved in the preparation of Seven Springs, which his father, Donald J. Trump, said was overstated. So I think at this point there's ample evidence within the record that if we are given, as we are entitled to assumptions in our favor, is more than sufficient for this to continue to a final verdict where the defendants can repeat these arguments, yet again, on their closing, in their posttrial brief, and your Honor will be able to make a decision with a full record.

I would also not belabor it here, but Mr. Kise is incorrect on disgorgement. The O G does not have an obligation to prove what loans Mr. Trump would have been able to obtain if he presented an honest financial statement. He chose to obtain discounted loans by the use of a fraudulent statement.

The burden here for the government is to demonstrate the reasonable approximation of profits causally connected to the violation; that's the SEC v. Fowler case at 6 F.4th 255 that we discussed in our letter briefing over

Mr. McCarty's testimony. With that, your Honor, I really won't belabor things anymore and I'm happy to answer any questions your Honor may have, but I think there's simply no basis for a directed verdict at this point.

THE COURT: I could ask you more questions, and that would take away some ammunition for Mr. Kise about one side or the other.

MR. KISE: Five minutes.

MR. W LL CE: Your Honor, the standard is usually move for directed verdict, yes or no. But Mr. Kise --

THE COURT: I --

MR. W LL CE: He had an hour and a half.

THE COURT: Nobody else from plaintiff, I assume? I'll give him a reply.

MR. KISE: Just briefly. Is it okay if I stand here?

THE COURT: Sure.

MR. KISE: Thank you.

Could you pull up slide 13, please.

(demonstrative aid was displayed on the screen.)

MR. KISE: So Mr. Wallace talked about the false business records statute doesn't have a materiality element to it, so facially, his argument is correct, but this is kind of part of the problem with the whole case. This is purportedly the false record, slide 13. nd on slide 13 you

could see the highlighted language, all material respects. So this certification is not false. It's no at false business record unless and until they proof that it's all material respect. They have to get past that language. They can't read that language out of the document.

Mr. Wallace also mentioned that the differentials were material, but didn't offer any testimony. He just said they are not material in the view of the ttorney General, but no bank thought that these differentials were material.

Intent, he touched on, um, just two brief points there. First of all, intent cannot be inferred. I mean, in the criminal context intent has to be established. President Trump, for the record, did not say, "I don't know and I wasn't involved." He didn't say that at all. He said what I quoted, "In my 50 years of experience" and "based on the disclaimers." He took responsibility for what any CEO would take responsibility for. Yes, they are his statements. He didn't say, "I wasn't involved" and "I don't know." He testified about the things he did know. nd he testified, which hasn't been refuted in any way, other than by accusation, that he relied on accountants, like any CEO would, any accountants -- any CEO is not there putting numbers together on a spreadsheet. There is no evidence he ever saw the spreadsheets; that doesn't mean that he testified that he wasn't involved;

that's not his defense at all. His defense is is that I didn't have any subjective intent to defraud anyone, because I didn't need to. I mean, Mr. Wallace, and that goes to that same point, circumstances and motive. The circumstances that are before the Court are circumstances involving profitable loans, no defaults, no victims, and no loss.

nd the motive that you had before the Court is to develop great projects, to pay interest, and to pay back the loans. I mean that's the circumstances and motive that are before the Court. There isn't anything else. They want to paint the ordinary as sinister. nd respectfully, that's not there.

gain, Mr. Wallace relied, as they always have, as I said, he is making my argument for me in that regard. He referenced specifically the summary judgment decision. But your Honor said, no intent, no materiality, and those are very different concepts. So relying on that is simply not sufficient.

The last one I'll make, perhaps to spare Mr. Roberts from standing up. On Eric Trump, they pointed to one e-mail. You are talking about a ten-year period, okay, there's five e-mails, four e-mails, one e-mail, um, there's nothing sinister; there's nothing intentionally criminal, which is what they are accusing these individuals

of. By communicating with someone in the finance department, in the accounting kept about valuations over a ten-year period, and simply because you don't remember that doesn't mean that you are now a fraudster. It also doesn't mean you had any material involvement, any real involvement in the preparation of the Statements of Financial Condition and the certification. This goes back to the spaghetti approach. They just want to throw it all up on the wall and say, well, the defendants are guilty.

Lastly, my comments do apply, as Ms. Habba said, with equal force to Mr. Weisselberg and Mr. McConney.

Thank you, Judge. I think I made it under five minutes.

THE COURT: You probably did. You just have to be careful talking about spaghetti around lunchtime.

MR. KISE: I know.

THE COURT: Just one question. I think you said "intent cannot be inferred." Well, I'm familiar with the doctrine in the cases that Mr. Wallace cited that fraud generally isn't, you know, done in daylight. People don't say I'm going to be committing fraud or commit to writing, this is a fraud. But you have to infer, at least in a civil case. I don't know about criminal. Don't you have to -- doesn't -- I'll rephrase it. Withdrawn. Can't fraud be inferred from circumstances in a civil case.

MR. KISE: Two things on that. Number one, we are dealing with criminal statutes, and as I began, I think the civil equivalent of the criminal burden of proof, this is why we think we are entitled to a directed verdict, another reason, is clear and convincing. So even with the deference that Mr. Wallace began with being accorded, there is no clear and convincing evidence here of proof of the criminal statutes.

This isn't pre-summary judgment. This isn't 63(12) where they get all everything lined up, the deck is fully stacked in their favor, whether it be by the legislature or otherwise, and that's not our issue today, but under 63(12), as we've gone through repeatedly, you don't have to prove much of anything other than somebody in the ttorney General's Office thinks it's a false statement, no intent, no materiality, no reliance, no jury, but here, now we do. Now we have to prove those concepts. nd they have not established those concepts, and frankly they haven't attempted to establish them. They are just simply relying on your judgment and this idea that well, you said on summary judgment that the statements were false. You didn't say anything about materiality. You didn't say anything about intent, and the numbers, as I began, the numbers are so great they must be material. No, they need someone to establish that, and that someone would be the bank in the

private sector who got to make that determination. s you saw from the numbers, the bank was not at all disvalued in any way, shape, form or fashion by a $2 billion differential.

MR. W LL CE: I'll just note my objection. That was a yes or no question.

MR. KISE: That's true.

THE COURT: I did ask him a question.

MR. KISE: Do we get our 15 minutes? You gave me five minutes.

THE COURT: You went past the five minutes.

Let's talk about burden of proof. I tend to think of them in a criminal context as beyond a reasonable doubt, 99 percent. Some other context, clear and convincing, I tend to think of 75 percent, and a preponderance of the evidence I tend to think of as 51 percent.

Let me ask the G. What's the, in a general way, what's the standard of proof here, because defendants are saying it's clear and convincing.

MR. W LL CE: We would say it's preponderance, your Honor.

THE COURT: On all questions in front of me?

MR. W LL CE: I think so, yes.

THE COURT: Mr. Kise, are you claiming clear and convincing on all questions in front of me?

MR. KISE: Certainly as to the criminal predicates, yes, which is most of the counts. I mean, disgorgement, as a lot of other things, that's a different analysis altogether; that's an equitable analysis. But in terms of the predicate counts, they are all criminal counts, and there is no -- yes, there is no 95 or 99 percent in the civil world. There's no beyond a reasonable doubt. The closest standard, the civil standard, if you will, is clear and convincing. That's our position anyway.

THE COURT: ny authority that clear and convincing would be the correct burden of proof in a 63(12) case.

MR. KISE: Well, again, it's not -- I can provide the Court with authority, but I would just draw that distinction, it's not a 63(12) when you are dealing with criminal predicates. 63(12) on count one, very different standard.

THE COURT: Okay. I understand the difference. ll right. Let's take a little break.

MR. W LL CE: Can we do ten minutes?

THE COURT: Ten minutes.

(Whereupon, a 10-minute break was agreed upon and taken by all parties.)

THE COURT: Well, defendants were sort of long-winded, plaintiff was sort of medium-winded, I'll be short-winded:

Taken under advisement.

Okay. What else do we have?

MR. MER: Your Honor --

THE COURT: s if that wasn't enough. nd obviously the time back there was spent really hashing this out and thinking. nd I appreciate the defendants' presentation, and I appreciate the plaintiff's presentation.

Okay.

MR. MER: Your Honor, we ask for an opportunity to be heard on our in limine motion concerning four of the five expert witnesses. So I appreciate the opportunity to be heard on that now.

THE COURT: I read your five-page or four-and-a-half-page letter. Was there any written response by the defendants? There didn't have to be, I am just asking.

MR. KISE: No, Your Honor.

THE COURT: Then let's hear the in limine motion.

MR. MER: Thank you, Your Honor.

The Court's September 26 decision and order was a significant development in this case. The Court held that the People prevailed on their 63(12) fraud claim based on the undisputed evidence as a matter of law.

The decision rested on predicate findings of fact by the Court that many assets in the Statements of Financial Condition for many years were fraudulently inflated to a material degree, rendering the statements false and misleading.

Now, defendants are certainly free to challenge that decision in the ppellate Division. nd in fact, they filed their notice of appeal already. But they are not free to ignore the decision in this courtroom at this trial. Yet that is what they have repeatedly done.

We have just heard a lengthy hour-long argument on a motion for directed verdict that, to a significant degree, ignored the holdings that this Court issued in its summary judgment motion. So to does their intent to call the four expert witnesses that are the subject of our motion.

THE COURT: Let me stop you a second. Do you want to withdraw your request to have these four witnesses testify? Yes or no?

MR. KISE: No. No, Your Honor.

THE COURT: Okay. Just wanted to make sure.

MR. MER: s a result of the decision and the

predicate factual findings that the statements were fraudulently inflated, any expert opinions about valuation of assets or accounting standards for personal financial statements, are simply irrelevant. nd allowing defendants to put on such expert evidence is, we submit, a total waste of time and resources.

In the wake of the Court's decision, this trial is now about four things:

One, whether defendants have the requisite intent to defraud.

Two, whether they engaged in a conspiracy to violate the three Penal Law provisions.

Three, what is the proper amount of disgorgement.

nd four, what equitable relief should be granted in addition to the equitable relief already included in the Court's decision.

nd I would like to just quickly review why the proffered expert testimony from Dr. Laposa, Mr. Witkoff and Mr. Flemmons is simply not relevant to any of these remaining issues in the case.

s to the remaining causes of action based on illegality, the predicate findings of fact made by this Court on summary judgment largely satisfy the elements of these claims, except for intent to defraud. That is,

whether each defendant had an intent to defraud when preparing or using the Statements of Financial Condition in business transactions with banks and insurers. The issue of intent essentially boils down to two questions: What did the defendants know, and when did they know it.

These questions are the realm of fact witnesses. These experts have nothing to say on this issue that is the least bit relevant. They simply have no knowledge about any direct or circumstantial evidence that would bear on any witness's intent.

The same is true for the related conspiracy claims. Experts have no relevant knowledge about whether agreements were or were not made between and among the defendants to engage in the illegal conduct.

Defendants appear to argue that their experts can somehow negate an inference of an individual defendant's intent to defraud, by showing that through some valuation method that was never actually used by the defendants, one could, hypothetically, have derived a value for an asset that is higher than the value that they actually derived.

First, this is the same argument that defendants raised in support of their summary judgment motion. In fact, based on the very same expert opinions that they submitted by affidavit and through their reports that is

part of the summary judgment record. nd it has already been rejected by the Court in its summary judgment decision.

Second, the argument simply makes no sense. The Court has found that the statements were fraudulently inflated. The issue of intent is based on what the defendants actually did and what they actually knew when they were fraudulently inflating the values, and certifying the statements to banks and insurers. nd whether what they did provides direct or circumstantial proof of intent to defraud, again, is the realm of fact testimony, not expert testimony.

It simply doesn't matter what someone else could have done to value the assets at their current estimated values, it matters what was actually done. nd that's a fact question to be proven through fact witnesses and the documents in the case.

nd to the extent that the defendants are really arguing that based on their expert case the values were not inflated at all, that ship has sailed. That is just a refusal to acknowledge the binding effect of this Court's decision. The Court has held that many values were fraudulently inflated, and defendants have to live with and abide by that ruling at this trial.

Now, as to the amount of disgorgement, we put on

our banking expert, Michael McCarty, to provide his expert opinion about how to quantify the ill-gotten gains attributable to the defendant's use of the fraudulently inflated statements to obtain lower interest rates on loans. None of the four experts at issue on our motion are -- have anything to do with banking or disgorgement. I expect we will see defendants add a banking expert to their list for December. nd to the extent their banking expert offers opinions on matters involving disgorgement, we certainly have no issue with defendants' right to present that testimony. But the issue of disgorgement does not provide any avenue for defendants to present these experts that are the subject of this motion, who are dealing with valuation and insurance and accounting principles.

Now, as to the remaining equitable relief. The remaining additional equitable relief that plaintiff is seeking, that requires the Court to consider evidence bearing principally on the scope of duties for the receiver, whether to bar individual defendants from serving in certain corporate capacities; whether to require preparation of an audited financial statement; and whether to replace the trustees of Mr. Trump's Revocable Trust.

Now, the evidence relevant to the Court's

consideration of this type of relief involves the degree of culpability that each defendant has in the preparation and dissemination of the fraudulent financial statement -- statements and matters concerning existing corporate culture at the Trump Organization.

Defendants' proffered valuation and accounting experts offer no opinions that bear on these issues. quick word about a separate argument we raised with respect to Mr. Witkoff and Mr. Miller, who is an insurance expert, both of whom were designated solely as rebuttal experts. We did not call the experts that they have been designated to rebut, because for all of the reasons I am arguing, we don't see a need for that type of expert testimony in light of the Court's summary judgment ruling. So there is simply no basis to permit these rebuttal experts to testify. They could have been designated as experts in their case-in-chief, but they weren't. Their opinions are only relevant to counter opinions from our experts that have not been offered into evidence. They should be precluded.

I would also note that Mr. Miller, who is being offered as a rebuttal insurance expert, he is not their only insurance expert. They did designate another person, Mr. Giuletti, as their insurance expert on their case-in-chief. He is also on their calendar for November,

and we do not seek to preclude his testimony on this motion. While we certainly reserve the right to object to specific questions during his examination, we agree there is at least a basis to put him on the stand, since there is an insurance fraud claim that remains in the case. So just to be clear, our objection to Mr. Miller is that he was a rebuttal witness, and we haven't put in the witness that he is being called to rebut.

I am going to make a final point, and it is really more of a fervent plea, Your Honor. For some evidentiary objections the Court has remarked that because this is a bench trial, the Court will hear evidence now and decide what weight to give it at a later date. While that approach, and I would call it, without being pejorative, the path of least resistance, is certainly one that many judges often take when there is no jury. nd it might make sense to take that approach when the issue is whether to let in a handful of documents or to listen to a few more minutes of questioning. I submit, Your Honor, that taking that approach here with respect to these expert witnesses, would be wrong and it would be inappropriate for three independent reasons:

First, this is not about adding a few more documents to the record or sitting through a few more minutes of testimony. llowing these experts to testify

will come at significant cost to the Court and the parties in terms of time and effort. nd for the plaintiff, quite frankly, taxpayer expense.

Defendants have three additional valuation and accounting experts, in addition to the ones that are the subject of this motion: Mr. Chin, Mr. Moens and Professor Bartov, who will, no doubt, show up on their witness list for December. nd allowing the valuation and accounting experts to testify will likely require us to put on a rebuttal expert case. This will add substantial time to this trial. These four experts on the current calendar for November account for a solid week of testimony. Including the other valuation and accounting experts they will likely call, our cross examination of these witnesses, and plaintiff's rebuttal experts that will likely be necessary, will add, I would estimate, two weeks of trial time at a minimum. t a minimum, Your Honor.

Second, the Office of the ttorney General and more specifically all of these people here at this table in the well behind me, expended a tremendous amount of effort in culling through a huge volume of discovery material in order to present to the Court a comprehensive summary judgment motion and record that would permit the Court to dispose of a significant portion of the case as a matter of law, and substantially narrow the issues for

trial.

We succeeded in that effort. It would be manifestly unfair, I submit, to our side, and would deprive us of the benefit achieved by our summary judgment victory to a significant degree, to now say that despite resolving the 63(12) fraud claim in our favor and removing that claim from the scope of the trial, we should nevertheless take the path of least resistance, act as though the issues for trial have not been narrowed, and spend at least two weeks hearing expert evidence that is not relevant to the remaining issues in the case.

Now, defendants can spin it however they want, press conferences outside of this courtroom. They can take the stand and testify about their perfect disclaimer clause, their statute of limitations theory, and they can invoke other defenses that this Court has repeatedly rejected. But none of that wipes away the court's decision that is the law of the case. Your Honor, we worked hard to achieve the substantial victory we obtained on summary judgment. We should be permitted to benefit from the more streamline trial that inevitably should flow from that victory.

Third, the Court has broad discretion to preclude expert testimony that has no relevance to the claims at issue. nd more importantly, and this is the

test in the case law that is clear, will offer no assistance to the Court as the trier of fact.

The Court should exercise that discretion here to preclude these experts from testifying, because this trial should not be turned into an opportunity for defendants to supplement the summary judgment record in an improper attempt to shore up their appeal from the Court's summary judgment decision. They have their opportunity to create a record in opposition to plaintiff's partial summary judgment motion. That was the record on which the Court rendered its decision, and it is the record on which the First Department will review your decision on appeal. This trial is not their opportunity to get a do-over on the summary judgment motion.

Your Honor, for all of these reasons, the Court should preclude defendants from call Dr. Laposa, Mr. Flemmons, Mr. Witkoff and Mr. Miller.

Thank you.

THE COURT: Just one second. I am wondering whether there were two intentional references there. Do-over was very big in City Slicker. Do you remember that? This is a do-over?

nd "What did he know and when did he know it," that was a Watergate phrase, wasn't it? I am getting some --

MR. MER: It was indeed. nd it is phrases I use repeatedly when they are appropriate, Your Honor.

THE COURT: ll right. Mr. Kise, I am sure you are anxious to talk.

By the way, now you know what it is like to listen to a long presentation.

MR. KISE: I know.

THE COURT: I am sure it is not your first rodeo.

MR. KISE: It isn't, not with Mr. mer.

THE COURT: To start off, just as a matter of logic and common sense, do we need Witkoff and Miller to rebut testimony that is not going to exist?

MR. KISE: That is what? I am sorry?

THE COURT: Do we need them to rebut testimony that is not going to exist, that doesn't exist.

MR. KISE: So that raises an interesting point.

The first thing I want to say is, I don't know that I am shocked, because everything I have seen here from the ttorney General's office it is hard to shock me. But I suggest that Mr. mer check the Internet, Vladimir Putin has some openings. That's where he belongs. No question that's where he belongs. This is beyond crazy.

So now they have had five weeks to put on a case, they have had an open-door policy. nd he has the

audacity to stand here, the temerity to stand here and tell this Court, oh, well, I know you have allowed evidence in on this liberal standard, and we have operated on that, that's great when it is our case for the ttorney General, but you know, you shouldn't do that now, Judge, that's a waste of time. Frankly, Your Honor, if I were Your Honor I would be insulted by that. That they don't want you to hear evidence.

To your question, how they present their case, how they call their experts, whether they call their experts, does not dictate how we present our case.

THE COURT: If you are trying to rebut testimony that doesn't exist.

MR. KISE: No. No. We put them in as rebuttal -- I am sorry. We put them in as rebuttal because that was the sequencing during the course of the pretrial preparation. But we are not locked in forever to, oh, that's a rebuttal witness, if you don't call your witness, I don't get do it. Those witnesses have things to offer. They have changed the course of their case.

The only two bases for excluding experts in the case law are, they are not qualified; and they weren't disclosed. The whole purpose of the pretrial disclosure process is not to lock someone in and say, okay plaintiff, you get to now dictate how we present our case. It is to

disclose to them if these individuals take the stand and there is an issue for them to testify about, then this is what they will say. nd they have had full and ample disclosure. nd these witnesses all address a key issue that Mr. mer glossed right over when he mentioned your summary judgment decision.

He stated, which is their position, that you have already determined that they were inflated to "a material degree" but your opinion doesn't say that. We are here to talk about intent and materiality. Something that I know they don't want to talk about. So these witnesses relate to that. nd we should be entitled to present the evidence to the Court. It is a bench trial.

The goose gander rule, what is sauce for the goose, has been on ample display throughout the course of these proceedings. nd after spending what is, no doubt, tens of millions of taxpayer dollars chasing down someone who engaged in successful business transactions that made all of the parties hundreds of millions of dollars, they are now suddenly concerned with the resources of the State. nd so I think it rings hollow.

We are not ignoring your decision. But we are certainly entitled to put on a case. Unless maybe not. I guess maybe we should just ask them. Should we rest now and not have any defense of any kind? That's really where

they want this to go.

nd so these witnesses, Mr. Witkoff is a developer who will speak to how developers view assets. His testimony isn't going to take weeks. But it goes to state of mind. We are talking about intent and we are talk being materiality. Remember that slide 13 that I put up? That pesky materiality language that the government doesn't really want to focus on?

THE COURT: Mr. Kise, I hang on your every word, I am sure I remember. But let me stop you for a second.

Your opening comment about one of the plaintiff's counsels is completely uncalled for. I think you should apologize.

MR. KISE: I am not going to apologize, Your Honor. Because frankly, I am not going to. That is the most astonishing display of one-sided anti-democratic anti-rule of law principles I have ever seen in my years. nd I am sorry, but that's it. There is no reason for me to apologize. I never had anyone from the government say you can't put on your case, in any case, that you can't put on your case.

nd now the rule that they have benefited from, that they have benefited mightily from, the latitude that was accorded them in putting on Mr. McCarty, Mr. McCarty amended his disclosure four days before he took the stand,

his expert disclosure. So all of this. nd now they say, well, we shouldn't -- we shouldn't be allowed to put on our case and Your Honor should be concerned with judicial economy and Your Honor should be concerned about this goose/gander rule doesn't apply anymore. They were certainly very happy to be the recipient of it.

So I'll refrain from further pejoratives, but I will not retract. I don't think there is a reason to. I am entitled to my opinion, and I think his conduct is unfair to my client. nd to me, frankly.

To say that here we are, and we are not ignoring your decision, but we have to be entitled to put on our case as to intent, as to conspiracy. These experts have nothing to do with disgorgement.

Mr. Laposa is a valuation expert.

THE COURT: Wait. Wait. Before we get to him.

I'll use another cultural political historical reference. The Red Scare. He is a Communist, send him to Russia. Let's leave the ad homonyms out of it. You don't have to apologize. I think it was totally uncalled for, totally incorrect.

MR. KISE: Well, Your Honor, I will say that unlike everyone else in this courtroom, to date, that's the first time I have ever used an ad homonym insult. I believe other people have used them against me, in the

courtroom. Including, respectfully, Your Honor. So I just, you know, I will refrain from further pejoratives I agree with you that ad homonyms are not something we need to have on a basis in a courtroom.

I'll go back to legal arguments.

THE COURT: Now let's talk about the two rebuttal witnesses.

MR. KISE: Right.

THE COURT: Part of the purpose of expert reports are to say what the person will testify to. They can't just then come up here and testify to anything they want to. Their testimony is restricted by what they said they would.

MR. KISE: Right.

THE COURT: I'll confess, I don't think I read the -- all of the expert affidavits, but plaintiffs are telling me that these two proposed expert witnesses, Witkoff and Miller, just said, I am going to testify to rebut the testimony of X and Y; and that X and Y haven't testified.

MR. KISE: They testified that they are going to rebut the positions taken by the People.

THE COURT: Let me ask. ll right.

MR. KISE: So in the context of expert discovery, that's how it is done. But they have advanced

these positions. They have said, and continue to say, that my clients had intent. They advanced the position and said my clients, you know, that these were material departures. So we are entitled to at least demonstrate the state of mind. We are entitled to demonstrate what is the thinking of our clients.

nd the discussion we had, to the extent Your Honor is not going to grant the directed verdict, then we certainly have to rebut what they are advancing as their case, whatever it may be.

They are entitled -- they are the master of their own case. nd I will say for the record, Mr. Robert is the expert, as we know. I don't see how a plaintiff gets to sit back and decide, okay, I am not going to call these witnesses now and then if the defense comes along and demonstrates that there are gaping holes in their case in chief, that they get to call rebuttal experts after that. That's not how it works. They made a choice as to who they wanted to call and how to present their case. nd if now there are holes in that case. nd there are holes in that case. nd if the defense in presenting its case, puts on a witness that demonstrates, for example, that a developer, like President Trump, would view properties differently. Mr. Laposa, the same thing. We are not challenging the underlying finding by Your Honor

with respect to the summary judgment motion.

THE COURT: Can you stick to these two witnesses?

MR. KISE: I am.

THE COURT: I don't think you are.

By the way, my institutional memory tells me, yes, I did read all of these affidavits, but months ago. So instead of saying I didn't read them, I'll say I didn't remember exactly what they said.

MR. KISE: I took it that way.

THE COURT: Mr. Kise, you can stay at the podium.

Plaintiffs, do you stand by the representation, as I understood your letter, to be the only reason that Witkoff and Miller were mentioned as experts or their only testimony they were going to give was rebuttal testimony to the two witnesses that didn't appear? Yes, no?

MR. MER: Three witnesses, Your Honor.

THE COURT: Three. Okay.

MR. MER: So Mr. Witkoff is a rebuttal to our two valuation experts Mr. Hirsh and Mr. Korologos. nd Mr. Miller is a rebuttal to Professor Baker, who is our insurance expert.

I would add that both of these witnesses were designated on the schedule for rebuttal expert witnesses.

They were not designated in the initial round of experts. So they are rebuttal experts.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

MR. KISE: Your Honor, because of the initial round, neither side has any notion what the other side is going to present. So the only reason they are in the rebuttal --

THE COURT: You do have a -- knowledge of what they are going to present.

MR. KISE: Not until we get, not until we receive it. It was simultaneous. We exchanged -- we exchanged primary experts, and rebuttal experts simultaneously. So it wasn't like we had time to figure out -- oh, no, this was all simultaneous.

THE COURT: I didn't realize that.

MR. KISE: So that's my point. Before they presented their experts, just like before we presented ours, we would have no idea, really, of the parameters an contours of their case. nd so the fact that these witnesses wind up in the rebuttal bucket is simply more by the circumstances of the way the litigation unfolded pretrial, as opposed to any, like, understanding of what their case was. So that's why I'm saying, the fact that they are not calling someone in their case, that's their prerogative. If they believe, as they do, and I respect that, that they have satisfied their burden of proof, okay, they don't need an expert. But that doesn't mean that we are not entitled to present our case.

Had I known what they were going to present, either before in pretrial, or now at trial, what the evidence would be, then I would have designated all these people as our experts on primary case.

They just -- there's no rhyme or reason. There's no designation that has a meaning because of the way it unfolded. nd so these witnesses will speak to intent, materiality. In the case of Miller, reliance, which goes to disgorgement. Flemmons, as you may recall me talking about, is a former SEC enforcement chief forensic accountant. His testimony goes to materiality, and governing standards, and whether or not they met those standards with respect -- whether or not they had the requisite intent to violate those standards; whether any violation of those standards was material. Those are the issues that are decidedly not part of your Honor's summary judgment, because they didn't have to be. The ttorney General argued, forcefully, at summary judgment that you don't need to consider any of this. nd now we are here considering any of this, and they are saying, no, it's all subsumed by your summary judgment decision, which I think is both inaccurate and unfair.

So the fact that the ttorney General did not put on their experts doesn't -- we think should result, in part, is another basis for why we should get a directed verdict, but to the extent that we will not, and we are here to

defend ourselves. Then the Court should be able to consider that evidence. The Court, I would think, would want to weigh that evidence. There's plenty of tools the Court has if it believes that it's going on to long, or it's taking too much time, but for us to say that our case is going to be completed in less trial days than, I believe, the government's case, and we've already got us ahead of schedule, I think give us -- we haven't even gotten out of the gate yet and they want to shut the door. So I just don't think all of these witnesses speak to the elements that are squarely and completely before the Court.

The degree of culpability, Mr. mer mentioned that on the equitable side. The degree of culpability goes to state of mind, goes to intent. It goes to whether or not these individuals, you know, flagrantly violated something, or in the case of the statements under 63(12), we don't have to prove all of this if you find that they are false. s you've said before, okay, I find that they are false. That doesn't mean that they are materially false, it also doesn't mean they intended for them to be false. nd then there is a whole lot of layered issues there.

THE COURT: Five-minute warning.

MR. KISE: Mr. Witkoff, Mr. Laposa -- Dr. Laposa, Mr. Flemmons, Mr. Miller, all of these witness noticed. nd the goose/gander rule, however the Court wants to phrase it,

applies wholly here. There's no reason to close the door to us after they had benefitted handsomely from it being opened. There was never any complaint about it before. nd I will leave some time for Mr. Robert, because he is far more the experienced practitioner when it comes to the CPLR in these matters than I.

You heard me say it before, the world is watching, so the world needs to see that everyone's evidence at least gets into the courtroom at some point, respectfully.

Thank you.

THE COURT: Thank you. Mr. Robert.

MR. ROBERT: So sitting here and hearing Mr. mer talking about wanting to -- one of the reasons to deny these experts is wanting to save money -- and I'm not going to use any pejorative words -- is beyond anything I could fathom. The relief they are seeking, in particular to my two clients who are relatively young men, is to bar them from doing business in New York for the rest of their lives, and yet he is now coming in here after spending five weeks saying we really should try to short circuit this.

I'll remind the Court that at the last pretrial conference, after the summary judgment motion had been granted, you actually asked the government, well, since you already prevailed on the first cause of action, do you need to proceed on the balance? Do you want to? nd in a

resounding yes, they said, " bsolutely." nd your Honor, in a colloquy with them was saying, well, a lot of the relief is the same. You don't get more relief from the other causes of action. nd their answer was, "You need to hear it because that may affect part of your ultimate decision."

So they could've taken away, to save the taxpayers of New York money, they could've said, yes, let's move to a damages phase of the trial. They elected not to do that. t this point now, because they changed their theory to prejudice our clients, respectfully I think would be improper.

Now, as to this issue of rebuttal not rebuttal, I respectfully submit that that's just an absolute red herring. In New York, the fact that we have expert depositions in this case, and expert reports is even more than we usually have in case like this. So there's no issue. My experience has been, as Mr. Kise said, it's always an issue of notice or a qualification of the experts. Not when the plaintiff changes their theory midstream, that affects the ability of an expert to testify. I respectfully submit, I think one of the bases that they failed to meet their burden, and our directed verdict should be granted, is that they failed to call an expert on those issues. However, if your Honor agrees with them, at that point it is incumbent upon us to put on a defense that we feel is

appropriate.

My final thing is, what I really took offense to the most of what Mr. mer said is that there should be consideration for the efforts of the ttorney General staff in doing their summary judgment motion. ll I'll say on a personal level is, they had this case over three years. This defense team, in less than a year, worked on this case, are here trying this case, and we are working 24/7 to be able to comply with what these Court's orders were. So nobody is working harden than us, nobody is putting in more energy than us. So to say we should be precluded from bringing in these experts because they are tired, is offensive.

THE COURT: Mr. mer, you are still standing there. I assume you want to say something.

MR. MER: I do, your Honor. few quick points. I think Mr. Kise completely confuses fact evidence with expert evidence.

Nobody is seeking to preclude them from putting in whatever fact witnesses they want to put on the stand. This is about expert testimony. No party has an entitlement to put on an expert case if it has nothing to do with the issues in the case and will not assist the trier of fact. There's no due process right to put on expert testimony. nd the cases we cite in our letter demonstrate that courts

have routinely precluded parties from putting on experts if the experts are not going to assist the trier of fact.

So the notion that we are somehow trying to preclude them from making their case is nonsense. This is about expert testimony. nd our position is that in light of the Court's summary judgment decision, there are no issues left in the case that would make these experts relevant.

The goose/gander rule, I have to make a point about this. They are distorting this rule beyond all recognition. This is a very simple rule. When the Court makes a ruling on an evidentiary issue, the Court should then apply that ruling on an evenhanded manner as the same issue comes up again and again throughout the course of the trial.

It doesn't mean that for every time I sustain your objection I have to sustain the other side's objection. These evidentiary rulings are about calling balls and strikes based on how the pitches are coming over the plate. nd there's no goose/gander rule that says if I sustain ten of your objections I have to sustain ten of your adversary's objections.

I would also add, the rule has no application here because the Court has not previously ruled on the question of whether expert testimony is or is not relevant to the issues in the case. There's been no ruling that the Court

has issued on this matter to then apply in an evenhanded manner. This is a matter of a clean slate for the Court in terms of whether and to what extent valuation and accounting experts have a role in this truncated narrower trial as a result of the Court's summary judgment decision.

THE COURT: Hold on. If I can speak for Mr. Kise for a minute. His references to goose and gander are that not about expert testimony, but about the fact that you've had a long time to put on a long case, 25 witnesses in 25 days. He wants an opportunity to put on a defense.

MR. KISE: nd expert as well. I mean, Mr. McCarty -- we had that debate over McCarty, whether or not he should be permitted. You said, which is your province, particularly in a bench trial, I could hear it all and I could sort it out. Which would be the appropriate procedure here.

THE COURT: Let's break for lunch. I'll have --

MR. MER: Can I just finish two more points?

THE COURT: Quickly, and I'll probably give you a chance after lunch, because the food might regenerate the brain.

MR. MER: I understand. This will be quick. I think I expressly said that we have no issue with the banking experts that they want to put on in their case. They could put on all the fact witnesses they want and a

banking expert. We have no issue with that. So this goose/gander rule, it's just nonsensical.

Mr. Kise talked about state of mind. I don't understand how an expert, who's retained after the fact, has any relevant information to impart on a witness's state of mind at the time of the events in question.

nd finally, Mr. Kise said Mr. Miller goes to disgorgement. I don't understand that. We are not putting on any disgorgement for the insurance fraud. We haven't put in a single piece of evidence seeking disgorgement with respect to any differential in the premium. That's not part of our disgorgement case.

Our disgorgement case is based on the loans and the differential and the interest rates, and that was Mr. McCarty's testimony.

THE COURT: Thirty seconds. Do you need to have a rebuttal expert on disgorgement on the insurance?

MR. KISE: Just briefly, your Honor. I mean, I know you said after lunch. Do you need us back? I don't have anything more to argue, but we are happy to come back.

THE COURT: Have a good lunch, but come back.

MR. KISE: The only thing I'll say on this point is the best disinfectant is sunlight. They want to keep this case shrouded, in their view, their view of the world. They don't want the Court, they don't want to hear evidence and

-- to hear full evidence. nd yes, yes if Mr. mer doesn't understand how the experts will shed light on the issues before the Court, it will become apparent to him, I'm sure, when they testify.

Thank you.

THE COURT: Who first said sun slight is the best disinfectant?

MR. MER: Brandeis.

THE COURT: Brandeis. See you after lunch at 2:15.

(Whereupon, the case on trial was adjourned until 2:15 for the luncheon recess.)

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F T E R N O O N S E S S I O N

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THE COURT OFFICER: ll rise. Part 37 is back in sex. The Honorable Judge rthur Engoron presiding. Please be seated and come to order.

MR. KISE: Your Honor --

THE COURT: Mr. Kise, when there is a three-day weekend, I go up the stairs much faster.

MR. KISE: Indeed, you were bounding. I'm glad you gave us the lunch break. I'm going to apologize to the court and apologize to Mr. mer. You know it's not like me to be ad hominem. I shouldn't be. I wasn't raised that way. So when you are right, you are right. Mr. mer is

working very hard. He is being a zealous advocate for his client. We are all very tired. It doesn't excuse it, but I just want to apologize on the record. I could withdraw it. You could strike it, leave it there, whatever you want, but I shouldn't have said what I said.

nd I hope the apology is at least accepted, but as you know, I don't make extrajudicial statements. I don't make pejoratives, and I will go back to being my assertive, but generally affable self.

THE COURT: Mr. mer, any response or requests.

MR. MER: I appreciate it, and I certainly accept the apology. Thank you.

THE COURT: ll right. Does either side want to say anything else about the question of whether plaintiff is entitled to preclude the four experts that their letter addressed? No? No? Oh, okay.

Well, Mr. mer asked me not to take the path of least resistance, and I will take that to heart, generally speaking through the trial. Obviously one of my real goals here -- well, one of the real goals, which is obvious, is I don't want a retrial of this case. I don't want to be reversed. nd to me, that basically speaks in favor of allowing, rather than disallowing, the questions, answers, expert testimony, et cetera; however, I'm going to let -- I'm going to deny the request, without prejudice to object

to anything that they think is irrelevant, and I'll sort of explain how I see the heart of this case. nd I think I made this clear in the summary judgment decision of September 26th. But let me say again, I'm not here to value these properties; I'm here to decide whether the Statements of Financial Condition and related documents were fraudulent, or whether they were correct or whether they were accurate. I'm not going to say oh, well, and I don't think I ever did, and I specifically disclaim saying it about Mar-a-Lago. I'm not going to say what a property is worth, because I don't have to. This is a case about, as we keep saying, it's a document case, or were the documents truthful, accurate, fair. nd I'm going to go through some of the highlights, if you will, the greatest hits we call it, of the summary judgment decision.

What I think I was allowed to grant summary judgment was because it's -- whether the statements were true or false, it was not a question of whether they presented the correct value of the properties, but whether they were internally true and internally consistent. nd here are the ways I found some, or maybe all of the ways I found they were not internally accurate or fair. I'll start with the low hanging fruit. nd I never want to overemphasize this. nd I'll give you the numbers.

First, the value of the triplex was fraudulently

inflated in the SFCs from 2012 to 2016 -- this is at page 22 of the summary judgment motion -- by inflating the square footage by nearly three times it's actual size. ll right, I don't want to focus on that.

Two, the value of Seven Springs was fraudulently inflated in the 2014 Statement of Financial Condition by disregarding and concealing the appraisals within its possession and reporting the value of Seven Springs to be more than 400 percent of its highest appraised value at the time.

Three, the value of the rent stabilized apartments as Trump Park venue was fraudulently inflated in the Statements of Financial Condition -- from now on I'll say SFCs -- from 2014 to 2021 by wholly disregarding the rent stabilized status of certain units and valuing them as if they were unrestricted. You can't get a fair statement of value by pretending that rent regulated apartments are vacant. The value is completely different.

Four, the value of 40 Wall Street was fraudulently inflated in the 2011, 2012 and 2015 SFCs by disregarding and concealing appraisals within defendant's possession and reporting its value as nearly $200 million more than it's highest appraised value at the time.

Five, the value of Mar-a-Lago was fraudulently inflated in the SFCs from 2014 to 2021 by wholly

disregarding the land use restrictions which severely limited the ability to develop the property, and were granted in perpetuity by Donald J. Trump in exchange for tax benefits.

Six, the value of berdeen was fraudulently inflated in the SFCs from 2014 to 2019 by falsely indicating that defendants had legal approval to develop 2,035 private residential homes instead of the 500 for which it had actually obtained legal approval.

Seven, the value of certain golf courses was fraudulently inflated in the SFCs in 2014 to 2020 by including a brand premium and ignoring appraisals by claiming the SFCs did not include his brand value -- that was pretty black and white -- while also incorporating a brand value into its valuations.

Eight, the value of cash was fraudulently inflated on the SFCs from 2013 to 2021 by falsely claiming that Donald Trump's interest in Vornado was liquid, when, in fact, he had no right to use or withdraw any of these funds as a minority owner to.

Nine, the value of the Vornado Partnership properties was fraudulently inflated in the SFCs from 2014 to 2016, and 2021, by disregarding and concealing appraisals within its possession and reporting its interest in the property to have a value of more than $170 million more than

the highest appraised value at the time.

nd finally, ten, the value of licensing deals was fraudulently included in the SFCs from 2014 to 2018, and 2020, by improperly reporting valuations of intra-organization deals in an asset category that purported to include only values of deals with outside third-party organizations, resulting in overvaluations each year of between 97 and $224 million.

So, first of all, again, sorry to repeat myself, this is common sense. You can't have a correct valid financial statement with these kinds of errors.

nd secondly, if the experts try to testify otherwise, I'm going to shut them down at my discretion. nd something that's bedeviled me this whole trial is the word "materiality", because as Mr. Kise was pointing out, the statutes say, well, there can't be a material misrepresentation. Well, I think I've said before, to me, if something is immaterial, it basically means de minimis. Okay, you could argue whether something is worth 200 million or 220 million, maybe arguably that's not material, but 200 million and 375 million are fraudulent. nd 25 million or 500 million, that is clearly material, and I don't need an expert to tell me that.

If you want to take me up on appeal on the grounds that Judge Engoron doesn't understand material because it's

all about how somebody views it, no, at a certain point -- I think these are the words I used in the summary judgment motion, at a certain point it's not material; it's not immaterial. It's fraud.

So bottom line, I'll let all the defendants' proposed experts testify, but in light of what I said about Mr. mer's comment, I'm not going to take the path of least resistance. If it's clearly irrelevant, I'm just not going to allow it.

So Mr. Kise, or anyone on the defense side.

MR. KISE: No, your Honor. I think we understand the Court's position. I would say, without going through each category, you are going to take it on a category-by-category basis. I do think you will find from the experts that there is some intersection of issues here, maybe broader than you realized, but we'll take that up, as you say, as we go forward.

THE COURT: You won the battle, we'll see if you win the war, on the experts.

MR. MER: I would also assume that at least on the rebuttal experts, one basis for objecting on relevance grounds is their opinion isn't addressing anything that has been put into evidence on our case.

THE COURT: I think that's logical and fair, and we'll save the all important taxpayers' money.

Changing subjects, I think I mentioned this before, and Mr. Kise and Mr. Robert, you know, newcomers let's keep things moving along. If somebody is -- if you have an expert or another witness who is not going to be all day, let's make sure you've got someone behind up.

MR. KISE: Well --

THE COURT: I'll be very harsh about that, too.

MR. KISE: -- as I've said, there's no one here that wants to be done sooner than me.

THE COURT: nd there's nothing you said more often than that, and I totally believe you, of course.

MR. MER: Some people may disagree that there's nobody who wants it to end sooner.

THE COURT: I'm sure we all have our own personal stories.

MR. KISE: That's true.

THE COURT: ll right. So have a great weekend. We are resuming 10:00 Monday morning; right?

MR. ROBERT: Yes, sir. Thank you.

THE COURT: The first witness will be?

MR. KISE: Donald Trump, Jr.

THE COURT: I know him.

MR. KISE: Yeah.

MR. ROBERT: Thank you.

THE COURT: Thanks a lot, everyone.

MR. W LL CE: Thank you.

(The case on trial was adjourned to Monday, November 13, 2023 at 10:00 a.m.)

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