

In The Matter Of:

*People of The State of New York v.
Donald Trump*

*ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS
December 12, 2023*

Cheryl-Lee Lorient

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK - CIVIL TERM - PART 37
 3 -----X-----
 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 5 JAMES, ATTORNEY GENERAL OF THE STATE OF
 6 NEW YORK,
 7 Plaintiff, Index No.
 8 -against- 452564/2022
 9 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC
 10 TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG;
 11 JEFFREY McCONNERY; THE DONALD J. TRUMP
 12 REVOCABLE TRUST; THE TRUMP ORGANIZATION,
 13 INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS
 14 MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC;
 15 401 NORTH WABASH VENTURE, LLC; TRUMP OLD
 16 POST OFFICE, LLC; 40 WALL STREET, LLC; and
 17 seven SPRINGS, LLC.
 18 Defendants.
 19 -----
 20 TRIAL 60 Centre Street
 21 New York, New York
 22 December 12, 2023
 23 B E F O R E:
 24 HONORABLE ARTHUR F. ENGORON,
 25 Supreme Court Justice

A P P E A R A N C E S:
 OFFICE OF THE ATTORNEY GENERAL
 OF THE STATE OF NEW YORK - LETITIA JAMES
 Attorneys For the Plaintiff
 28 Liberty Street
 New York, New York 10005
 BY: KEVIN WALLACE, ESQ.
 COLLEEN K. FAHERTY, ESQ.
 ANDREW AMER, ESQ.
 ERIC HAREN, ESQ.
 LOUIS SOLOMON, ESQ.
 MARK LADOV, ESQ.
 SHERIEF GABER, ESQ.
 ALEX FINKELSTEIN, ESQ.

(Whereupon, appearances continued on the following page.)

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1 COURT OFFICER: Part 37 is now in session. The
 2 Honorable Judge Arthur Engoron presiding. Make sure all
 3 cell phones are on silent. Laptops and cell phones will be
 4 permitted but only to members of the press. There is
 5 absolutely no recording or photography of any kind allowed
 6 in the courtroom. Now, please be seated and come to order.
 7 THE COURT: Okay. Welcome, everyone. Good
 8 morning. Today we are going to continue, and I hope, finish
 9 the cross-examination of Mr. Bartov, Professor Bartov. And
 10 then the plaintiffs want to call two rebuttal witnesses; is
 11 that correct?
 12 MR. WALLACE: Correct, Your Honor.
 13 THE COURT: So let's talk about that. They're
 14 proposed by plaintiff and opposed by defendants and sort of
 15 as an aside, I'll just note, everything in this case gets
 16 litigated. If somebody wants an expert, the other side
 17 says, no, they are not an expert. They can't testify. They
 18 don't know what they're talking about, etc., etc. etc. And
 19 I'm going to draw now on this letter that just came hours
 20 ago. I am going to draw on my general knowledge and on the
 21 letter itself for what I'm about to say.
 22 The basic purpose of a rebuttal witness is to
 23 challenge or contradict, I'll say it's to be rebut, but that
 24 would be a circular definition, the other side's testimony
 25 and its also going to be used to impeach which may be

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1 Cont'd Appearances

2
 3
 4 CONTINENTAL PLLC
 5 Attorneys For the Defendant
 6 101 North Monroe Street, Suite 750
 7 Tallahassee, Florida
 8 BY: CHRISTOPHER KISE, ESQ.
 9 JESUS SUAREZ, ESQ.

10 ROBERT & ROBERT, PLLC
 11 Attorneys for Defendants
 12 526 RXR Plaza
 13 Uniondale, New York 11556
 14 BY: CLIFFORD ROBERT, ESQ.

15 HABBA MADAIO & ASSOCIATES, LLP
 16 Attorneys for Defendants
 17 1430 US Highway 296, Suite 240
 18 Bedminster, New Jersey 07921
 19 BY: ALINA HABBA, ESQ.

20
 21 CHERYL-LEE LORIENT
 22 SHAMEEKA HARRIS
 23 SENIOR COURT REPORTERS
 24
 25

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1 somewhat overlapping concepts. And the -- a rebuttal expert
 2 is allowed to rely on matters in the record and personal
 3 experience. I don't think personal experience will be much
 4 of an issue here, maybe. There's an exception which I
 5 always like, it comes up in different areas of law, for an
 6 expert can rely on what experts generally rely on, what
 7 experts consider reliable. That's a little bit of a dicey
 8 fraud issue. We'll see if it really comes up here.
 9 And I do want to correct three misimpressions that
 10 the letter might create. One is -- well, I'm not sure it's
 11 correcting. The defendants came up with -- they would like,
 12 if there are rebuttal -- if there are rebuttal witnesses, to
 13 have sur-rebuttal witnesses. The only case that having
 14 support of that was in the criminal context, so I don't put
 15 much stock in that. They're different implications to
 16 criminal cases.
 17 Second, there was an assertion or an implication
 18 that plaintiff did not call any experts. I believe I deemed
 19 Michael McConney an expert; is that correct?
 20 MR. WALLACE: Correct, Your Honor.
 21 THE COURT: Thank you. And, finally, there's
 22 misinterpretation of the best evidence rule. The best
 23 evidence rule basically says if you want to introduce a
 24 document you have to introduce the original. If you can't
 25 find or can't access the original, you have to give a good

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1 reason why you're not producing the original. I think that
 2 rule goes back centuries to when we didn't have
 3 photocopiers, digital reproduction. We had scribblers so
 4 they can make errors. That's why you wanted the original
 5 but the rule still exist but that's its limitation.
 6 It is not some sort of catch all, well, we think
 7 they could have introduced better evidence so this isn't the
 8 best evidence. No. I would say there is no general
 9 prohibition on introducing evidence that may not be the
 10 best. You could have trials on what's the best evidence,
 11 trials within trials. So, I reject that particular
 12 assertion. I see no reason not to allow these two purported
 13 experts to testify subject to objections on the particular
 14 questions being offered.
 15 MR. WALLACE: May I just offer one correction, Your
 16 Honor. One is a fact witness, that's Mr. Sneddon. And one
 17 is an expert, that's Professor Lewis.
 18 THE COURT: Most of the letter was about Lewis so.
 19 Anything else before I turn to defendants? I see no reason
 20 to allow -- not to allow these experts, but if you want to
 21 reargue the letter, which I read very carefully, go ahead.
 22 MR. KISE: I won't reargue the letter. Thank you,
 23 Your Honor. I am not going to reargue the letter, but I am
 24 going to point out that this is clearly -- the Government
 25 has held these witnesses back. They could have called these

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1 witnesses, particularly Mr. Sneddon, on their -- in their
 2 affirmative case. The case law from the Court of Appeals is
 3 quite clear that rebuttal is limited to just that rebuttal.
 4 If we didn't introduce the issue in our case, they can't now
 5 say, oh, well, I'm rebutting your case by calling a witness
 6 that was fully available to them. They called Allen
 7 Weisselberg. They cross-examined Allen Weisselberg. They
 8 called Jeff McConney. They cross-examined Jeff McConney.
 9 When Jeff McConney took the stand in our case, they also
 10 cross-examined Jeff McConney.
 11 None of the issues that Mr. Sneddon -- at least
 12 from what we can see. Again, we have no proffer which I
 13 tried to get out of the Government last week and that was
 14 rejected -- but none of the issues that Mr. Sneddon can
 15 possibly speak to relate to anything that happened in our
 16 case. They may relate to testimony that they elicited in
 17 their case but the time to have dealt with that has passed.
 18 THE COURT: Okay. I do -- plaintiff, do you agree
 19 with what was just said?
 20 MR. WALLACE: I do not agree. And, I believe, when
 21 Mr. Sneddon testifies, it will be obvious that he is
 22 rebutting evidence that came in during the defendants' case.
 23 THE COURT: And I completely agree with you,
 24 Mr. Kise, as a general proposition. You can't just hold
 25 back on your case-in-chief and then say, oh, by the way, we

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1 have this surprised witness that we could have called
 2 earlier. So it would be limited to rebutting but go ahead.
 3 MR. KISE: The same is true of Professor Lewis. If
 4 the Court is going to ignore the Black Letter Law and allow
 5 Professor Lewis to testify under these circumstances where
 6 he clearly is their expert, should have been called, could
 7 have been called and should have been called in their
 8 case-in-chief to present affirmative evidence, evidence that
 9 we're not able to meet now because our experts can't testify
 10 about what they think Lewis is going to say on the stand or
 11 any other expert that hasn't testified. Mr. Wallace made a
 12 big pitch on that last week when we even talked about
 13 hypothetical numbers.
 14 Mr. Wallace said, oh, well, those numbers aren't in
 15 the record and they can't talk about this and they can't
 16 talk about that. It's all in the record. So, okay, if our
 17 expert can't talk about anything because it's not in the
 18 trial record, they don't get to tactically now say, all
 19 right, now, we are going to bring in Lewis and deprive you
 20 of any opportunity to rebut -- to provide a sur-rebuttal to
 21 Lewis.
 22 I mean, in the first instance, any of his testimony
 23 should have been provided on direct. They had full access
 24 to the experts. As you know, from prior conversations, our
 25 initial and rebuttal reports are really somewhat of a

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1 misnomer because they were all exchanged at the same time.
 2 So the experts were designated in most cases as both. They
 3 are not really one or the other. Professor Lewis put on an
 4 affirmative -- provided an affirmative report. He also
 5 provided what we are calling our rebuttal report in this
 6 case which responds to our experts, but in the nature of the
 7 timing, the way the case, according to the case law, should
 8 have laid out is if the Government wanted to introduce
 9 Professor Lewis testimony, they would have called him in
 10 their case-in-chief and introduced that testimony.
 11 Then we would have rebutted it in the ordinary
 12 course. We would have had the opportunity to challenge that
 13 testimony in the ordinary course. And then to the extent
 14 that new issues were raised or issues requiring rebuttal
 15 along the lines of the case law that Your Honor is
 16 acknowledging, they would then be able to, perhaps, recall
 17 Professor Lewis. But to come along now and introduce
 18 Professor Lewis opinions -- and I'll put that word in quotes
 19 because we are going to renew our challenge -- to the extent
 20 the Court is going to allow him to testify, we are going to
 21 renew our motion in limine. We can take that up after
 22 Professor Bartov is done so we don't waste court time at
 23 this moment. But there has to be some opportunity for the
 24 defense then to meet whatever evidence they've held back.
 25 They don't get to, like, through some sort of

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1 parlor tricks -- this is exactly what the case law from the
 2 Court of Appeals speaks to, that the two reasons for not
 3 allowing this sort of practice is, one, to preclude
 4 gamesmanship which there's --
 5 MR. WALLACE: I apologize for interrupting
 6 Mr. Kise. Mr. Lewis will testify in response to evidence
 7 that Mr. Flemmons put in. That would be the scope of his
 8 testimony so that is rebuttal testimony. Flemmons offered
 9 testimony about what GAAP says concerning some of the
 10 compilation and the standards applicable. Professor Lewis
 11 will testify to that. He's not testifying as to valuations.
 12 He's not doing other work. Flemmons said "X". Lewis will
 13 say not "X". That will be the scope of the testimony.
 14 MR. KISE: So with that proffer -- that's certainly
 15 helpful and I appreciate that and ordinarily I don't
 16 appreciate the interruption but in this case it is helpful.
 17 If I am understanding clearly, nothing that is contained in
 18 Professor Lewis initial report will be the subject of his
 19 testimony today; is that right?
 20 MR. WALLACE: It could be issues that are
 21 responsive to -- he has a view of ASC 274 that is different
 22 from Mr. Flemmons. It may have been included in his
 23 original report. We are not relying on ASC 274 as part of
 24 our case-in-chief, but the defendants have presented
 25 evidence on it. He is going to respond to that evidence.

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1 The form will be Mr. Flemmons said "X", what is
 2 your view on that. It will be classic rebuttal. If there
 3 is specific questions or areas that the defendants think go
 4 beyond the scope of rebuttal, they can object to those
 5 questions.
 6 MR. KISE: Setting aside whether Professor Lewis is
 7 qualified to render those opinions, which we'll get to in
 8 due course, then I just want to be clear what the scope of
 9 the testimony is. If that's -- if that's clearly what it
 10 is, then we'll take it up on -- we still object to the
 11 manner in which they've gone about doing this. The way they
 12 should have done this, again, is to call Professor Lewis in
 13 their case-in-chief.
 14 They have the affirmative burden in the case to
 15 establish their points. They didn't establish this point.
 16 In other words, it was their burden to establish in the
 17 record that ASC 274 provides "X". That's their burden.
 18 It's not our burden. We're the defense. If they didn't
 19 include that in their case-in-chief, they don't get now,
 20 under the guises of rebuttal to backfill their case. That's
 21 clearly what they're doing. They're essentially
 22 acknowledging that they have a hole in their case-in-chief
 23 because all Mr. Flemmons testified to were matters that they
 24 have full knowledge of and that they had the burden of proof
 25 on in their case-in-chief. Because Your Honor did not grant

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1 our directed verdict motion, we had no choice but to put
 2 Mr. Flemmons on to testify to make sure that the record was
 3 clear from the defense standpoint. We couldn't waive that
 4 opportunity but that doesn't now give them license to come
 5 back in afterwards realizing that there is a hole, realizing
 6 that they haven't established what they needed to establish
 7 under ASC 274, whatever it is that Professor Lewis purports
 8 to testify about, those were matters that must and should
 9 have been taken up in their affirmative case.
 10 And, respectfully, I would suggest to this court to
 11 reconsider. This is reversible error respectfully. Letting
 12 this in under these circumstances where they had clear
 13 notice of what the issues were, they had the clear burden of
 14 proof. They failed to meet that burden of proof. And I'm
 15 not being disrespectful to the Court. I'm just laying this
 16 out. They had the clear burden of the proof and now to
 17 allow them to come along and backfill their case and then
 18 later deprive us of any responsive opportunity on top of
 19 that, I just don't see how that is supported under any of
 20 the cases that we've cited or any of the case law in
 21 New York.
 22 And I don't think that the Government can cite a
 23 single case where this can be allowed to happen where they
 24 could lay and wait, not prove their case, wait to see what
 25 we put on and then now come in and attack it as rebutting.

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1 They are not rebutting anything. This is part of their
 2 affirmative case and that's what the case law speaks to as
 3 well. It's not really rebuttal evidence when it is --
 4 directly corresponds to an affirmative element in their
 5 case. There is nothing new here. So we would object to
 6 Your Honor allowing either of these witnesses to speak even
 7 given the limitation that Mr. Wallace has so kindly
 8 provided. That still demonstrates that the testimony goes
 9 to their affirmative burden.
 10 And if they haven't met their affirmative burden
 11 before that witness takes the stand, then -- then there's no
 12 basis for rebuttal before our case is closed and our
 13 directed verdict motion should be granted on the basis that
 14 they have admitted they've left out a key element of their
 15 case.
 16 THE COURT: So now that the specter of reversal has
 17 been raised again, do you still want to call these
 18 witnesses?
 19 MR. WALLACE: Yes, Your Honor. This is in sane
 20 that we are spending 20 minutes, 15 minutes discussing this
 21 issue. This is -- he is going to respond to points, as I
 22 said, defendants chose to put in their case. It doesn't go
 23 to our bread. It is classic rebuttal. It is pure rebuttal.
 24 They can object to individual questions, but we should move.
 25 And we have witnesses waiting and start taking the

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1 witnesses.

2 MR. KISE: The only other thing I'll add to that,

3 Your Honor, I would, again, direct the Court's attention to

4 the cases we cited particularly the Reinoso, R-E-I-N-O-S-O,

5 recent First Department case.

6 "The plaintiff's failure to offer expert testimony

7 as parts of case-in-chief, deprived her of the right to make

8 use of it as affirmative evidence."

9 And that's clearly what's taking place here. They

10 did not offer Professor Lewis testimony as part of their

11 case-in-chief. Simply because the evidence is evidence

12 that -- that contradicts our evidence, that doesn't make it

13 rebuttal evidence. But what you have to look to is whether

14 or not it was part of their initial burden. And this

15 evidence that Mr. Wallace is describing was clearly part of

16 their initial burden. They clearly had the burden to

17 establish that if there were any GAAP violations or any ASC

18 274 violations this is in their complaint.

19 Their complaint alleges these types of violations.

20 They are bound to prove the claim that they have asserted in

21 their complaint and part of that would be to call an expert

22 and to testify about whether or not there were GAAP

23 violations, accounting violations, violations of ASC 274,

24 etc. The failure to do that doesn't mean that now they can

25 come along and bring in evidence that contradicts -- that

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1 case-in-chief.

2 So, apparently, there is some discretion even in

3 the defendants' case. Mr. Kise, as usual, you're the soul

4 of reasonableness. I agree with a good portion, I wouldn't

5 try to put a percentage on that, of the basic principles

6 you're citing. I just totally disagree with your

7 application. I know we got facts and we got law. And

8 you're not applying your reasonable correct law to the

9 procedural history of this case in my view.

10 And, finally, I just want to mention that you refer

11 to Mr. Wallace's something like gracious limitation of what

12 rebuttal will be. Well, that's not Mr. Wallace. That's

13 what the law is. A rebuttal witness is there to rebut. So

14 we wasn't really limiting plaintiff at all. Let's get the

15 witness in, okay. Thanks Mike.

16 COURT OFFICER: Witness entering.

17 E L I B A R T O V, a witness called by and on behalf of

18 the Defendant, upon being previously duly sworn, was examined

19 and testified as follows:

20 THE COURT: I'll remind the witness as usual that

21 he's still under oath.

22 And, Mr. Solomon, please continue.

23 MR. SOLOMON: Thank you, Your Honor.

24 CONT'D CROSS-EXAMINATION

25 BY MR. SOLOMON:

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1 contradicts our evidence. It's not a rebuttal. It's

2 filling a hole. It is classic backfilling and clearly

3 within the purview of the cases from the Court of Appeals on

4 down and the First Department that say that this

5 gamesmanship is not to be -- not to be allowed.

6 Mr. Robert may have something to add.

7 MR. WALLACE: Your Honor, we have been talking

8 about this for 20 minutes. We already had your ruling.

9 THE COURT: Well, Mr. Kise likes to rebut my

10 rulings.

11 MR. ROBERT: If it makes you feel better,

12 Mr. Wallace, I'll be brief. Your Honor, based on your

13 ruling, are you then denying the application for a

14 sur-rebuttal witness being called by us?

15 THE COURT: Most likely but I'll see.

16 MR. ROBERT: Then I will reserve argument on that

17 until you make a decision on it. Fair enough. Just wanted

18 to check.

19 See, Kevin, it was quick.

20 THE COURT: This was from Reinoso versus New York

21 City Transit Authority. My research department has come up

22 with a quote, moreover in civil cases, the trial court has

23 discretion to allow rebuttal testimony that wouldn't have

24 been, I guess, that would have been more -- would more

25 appropriately have been adduced as part of the parties'

Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6480

1 Q Good morning, Professor.

2 A Good morning.

3 Q Do you recall that the SOFC, Statements of Financial

4 Condition, at issue in case are complications?

5 A I do.

6 Q Would Donald Trump free to have order audited SOFC's if

7 he chose?

8 A If he chose to, of course.

9 Q Do you recall that Mazars at first and then Whitley

10 Penn were the external accountants?

11 A Yes.

12 Q With respect to the SOFC's in this case and the

13 external accountants in this case, do you agree with the

14 following statement, quote, importantly, since the external

15 accountant that prepared the SOFC's has not audited the SOFC's,

16 it is in no position to express an opinion on whether the SOFC's

17 are GAAP compliant.

18 Do you agree with that statement?

19 A Absolutely.

20 Q Do you agree with the statement that Mr. Haigh Trump

21 was responsible for the preparation and fair presentation of the

22 statements in accordance with GAAP and let me limit that beyond

23 that quote to the years 2011 through 2016, the June 30, 2016,

24 SOFC?

25 A Yes.

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Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6481

1 Q After Mr. Haigh Trump became president, did you -- do
 2 you understand that the trustees were then responsible for the
 3 preparation and fair presentation of the statements in
 4 accordance with GAAP?
 5 A Yes.
 6 Q Can we please pull up PX519. It's already in evidence,
 7 I believe.
 8 Do you recognize this? Do you recognize this document,
 9 Professor?
 10 A Give me a chance to review it. Well, I review it at
 11 one point not recently but this is the credit report prepared by
 12 Deutsche Bank Private Wealth Management, Risk Management.
 13 Q If we could please turn to page 11. At the top, it
 14 carries over from the bottom of ten, Financial
 15 Analysis-Guarantor. So pages 10 to 11 Financial Analysis
 16 Guarantor. Do you see that, Professor?
 17 A Mine is page nine. Mine version is page 9 and 10, I
 18 think.
 19 MR. ROBERT: Mr. Solomon, I think he is looking at
 20 the document number as opposed to how much produced at the
 21 bottom.
 22 Q If you look at the bottom PX519 and --
 23 A Yes, I see that.
 24 Q So, the carryover paragraph, the last two sentences
 25 "based on the results of this due diligence, we made certain

Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6482

1 assumptions that resulted in adjustments to reported values.
 2 Details on such adjustments are included in the analysis that
 3 follows. Pardon me. It's three sentences. Additional details
 4 are included in the guarantor financial statements."
 5 The we in the first sentence, do you understand that to
 6 be Deutsche Bank?
 7 A It sounds like it, yeah. I didn't read the whole
 8 document, but it sounds like due diligent -- due diligence was
 9 prepared by Deutsche Bank, yes.
 10 Q Do you recall testifying on your direct that when you
 11 reviewed credit memos, you came to the conclusion that Deutsche
 12 Bank did not perform a mechanical automatic discount to the
 13 value of the assets on the statements of financial condition?
 14 A Well, to be accurate, yeah. That's true. That's true.
 15 Yes, that's true. Okay.
 16 Q That was your testimony on direct?
 17 A That was testimony. I provided explanation why but
 18 this was my testimony, yes.
 19 Q What did you mean by a mechanical automatic discount to
 20 the value of assets on the statements of financial condition?
 21 A Mechanical adjustment means that it doesn't base on
 22 economic analysis. You don't care about economic analysis. You
 23 care about arbitrary with the percentage, you take it off of the
 24 reported numbers without economic considerations.
 25 Q So how would that work in practice?

Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6483

1 A Well, in practice, you can say, hey, here are the
 2 numbers. They reported a hundred million dollars cash. I'll
 3 take a 50 percent discount, and I just consider it to be 50
 4 million. They reported \$1 billion of asset. I take 50 percent
 5 off, and I consider it as 500 million, etc. So there is no
 6 economic consideration whatsoever. It is completely arbitrary.
 7 Q So I understand the process, it could work that the
 8 lender here, Deutsche Bank, takes an amount that's stated on the
 9 financial condition, say a million dollars, gives it a
 10 50 percent reduction or haircut then values it at 500,000,
 11 right?
 12 A Only if they -- if the 50 percent is the determined
 13 arbitrarily without any economic analysis.
 14 Q In my example, I would say they take 50 percent. I
 15 want to make sure I understand how the math works. You take the
 16 million dollars from the stated number on the SOFC, 50 percent
 17 of that Deutsche Bank decides that's the number they want to use
 18 so the Deutsche Bank adjusted value for that asset would be
 19 \$500,000?
 20 MR. KISE: Is he stating that this is what Deutsche
 21 Bank or he is making up a hypothetical?
 22 MR. SOLOMON: Your Honor, can I finish my
 23 examination or we excuse the witness.
 24 MR. KISE: There is no excusing the witness. The
 25 question is whether he is mischaracterizing the evidence

Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6484

1 that comes before or whether he is stating a hypothetical.
 2 THE COURT: I believe it is a hypothetical.
 3 MR. SOLOMON: For the moment, Your Honor, it is a
 4 hypothetical.
 5 MR. KISE: If it is a hypothetical, it is an
 6 improper hypothetical because it fully contradicts the
 7 evidence in the record.
 8 THE COURT: Totally disagree. Overruled.
 9 Q I am asking the mechanics of it. Thank you. If I
 10 understand your testimony is that the mechanical automatic
 11 discount was not done for the assets identified in Mr. Trump's
 12 statement of financial condition?
 13 A That's true.
 14 Q Can we please look at PX302 which is the 2018 DB credit
 15 memo.
 16 THE COURT: I just want to add, I understand your
 17 point, Mr. Kise, and I shouldn't have shut it down like that
 18 but it was just a hypothetical. If you're going to use this
 19 type of method, it is sort of automatic haircut, that's how
 20 you would do it.
 21 MR. SOLOMON: Yes, Your Honor. That question at
 22 that the time was a hypothetical.
 23 THE COURT: Okay. So it's not assuming that that's
 24 what Deutsche Bank did. That's just if they did that that's
 25 what it would have --

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Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6485

1 MR. SOLOMON: At that time, the question was a
 2 hypothetical, that assumption, yes.
 3 Q If you could please turn to page ten -- withdrawn.
 4 Do you recognize this document, Professor?
 5 A I do. I do recognize it, yes.
 6 Q And what do you recognize it to be?
 7 A This is the credit report, again, just like before
 8 different date.
 9 Q And this is one that you looked at on your direct
 10 examination, correct?
 11 A I did, yeah.
 12 Q Could you please turn to page ten and if you look under
 13 4 Trophy Properties.
 14 A Yes.
 15 Q Was that the analysis you were looking at on your
 16 direct when you said that DB did its own valuation and did not
 17 rely on the valuations in the statements of financial condition?
 18 A Yes, I did.
 19 Q Do you recall testifying on your direct examination in
 20 response to questions from counsel that this analysis
 21 demonstrates to you that Deutsche Bank did not use the numbers
 22 in the SOFC's but rather did its on valuation?
 23 A This analysis means not only the table also the amount
 24 of the language, the comment above and below. The -- you have
 25 to consider the entire document not just the table in order to

E.Bartov - Defendant - Cross/Mr.Solomon Page 6487

1 CROSS EXAMINATION
 2 BY MR. SOLOMON:
 3 MR. SOLOMON: Let's go back to page nine of
 4 25 on this document.
 5 Q. Professor, if you look at the bottom of PX 302, it
 6 will tell you page nine of 25.
 7 A. I see.
 8 Q. Are you on this page that's on the screen?
 9 A. I am.
 10 Q. Here, again, the last three sentences are the same
 11 or similar to the ones we saw in the earlier credit memo,
 12 correct?
 13 A. Yes.
 14 Q. I want you to look at the chart below now.
 15 A. Okay.
 16 Q. Please, focus on the third row "real estate net
 17 equity."
 18 A. Okay.
 19 Q. If you go to the column "DJT 6/30/2014 client
 20 reporting" do you see that?
 21 A. I do.
 22 Q. That is -- is this 3,000,000,867 or 3,867,000?
 23 A. My reading it is three billion.
 24 Q. 3,000,000,867. If you look right to it, to the
 25 right, "DB adjusted."

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1 figure out that the analysis was based independently and not on,
 2 yeah, if you read the entire document, that's the conclusion.
 3 Q So your conclusion is that Deutsche Bank did not use
 4 the numbers in the SOFC's but rather did its own valuation?
 5 A Based on the entire document.
 6 Q Based on?
 7 A The entire document.
 8 Q The entire document?
 9 A Yes.
 10 Q Thank you.
 11 (Continued on next page)
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E.Bartov - Defendant - Cross/Mr.Solomon Page 6488

1 Do you see that?
 2 A. I do.
 3 Q. 1,933,000,500, right?
 4 A. Yes.
 5 Q. You can check my math if you want. But, I get
 6 that that's, exactly, fifty percent of the reported value,
 7 right?
 8 A. Yes. Maybe. I trust your -- that's okay. Yes, I
 9 accept that.
 10 Q. Don't accept it. Is that, exactly, fifty percent
 11 of the client to credit --
 12 A. Yes, it is.
 13 Q. Okay. Now, look for the years 2015, client
 14 reported 4,390,000,000, DB adjusted 2,000,000,195; fifty
 15 percent again?
 16 A. Yes.
 17 Q. 2016, fifty percent again?
 18 A. Yes.
 19 Q. For the DB adjusted amount as compared to client
 20 reported, right?
 21 A. Yes.
 22 Q. 2017, fifty percent?
 23 A. Yes.
 24 Q. That's the adjustment Deutsche Bank did again?
 25 A. Yes.

E.Bartov - Defendant - Cross/Mr.Solomon Page 6489

1 Q. Now, look two rows down, "real estate licensing."
 2 Again, start with 6/30/2014.
 3 "329.7," do you see is that?
 4 A. Yes.
 5 Q. Then, the DB adjustment as 164.9. If you round
 6 off 164.851 that would round up to nine, right?
 7 A. Yes.
 8 Q. That's, exactly, 50 percent?
 9 A. Yes.
 10 Q. And now, in 2015, is the DB adjusted, exactly,
 11 fifty percent?
 12 A. Yeah.
 13 Q. 2016, is it, exactly, fifty percent?
 14 A. Yes.
 15 Q. 2017. Excuse me. Yes, in 2017, is it, exactly,
 16 50 percent?
 17 A. Yes.
 18 Q. Professor Bartov, you testified, on direct, that
 19 you reviewed some of the trial testimony in this case; is
 20 that correct?
 21 A. Yes, of course.
 22 Q. If you scroll up on this page to the signature
 23 line, you will see the credit memo.
 24 One of the credit officers that signed, on the far
 25 right, is Nicholas Haigh.

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1 Is that your testimony, sir?
 2 Yes or no?
 3 A. This is my testimony because, you distorted the
 4 mechanism. They didn't do it in a vacuum. They first did
 5 an analysis of a number of assets, very detailed analysis,
 6 and they have the Valuation Services Group, a specific group
 7 that does the analysis.
 8 Once he satisfied their needs for the collateral
 9 for the guaranty then, as I explained, clearly, yesterday,
 10 banks do not burn cash for nothing. They do not take
 11 analysis that give them no benefit.
 12 So, once they perform the analysis and they figure
 13 out that the four trophy asset valuation is about one
 14 billion dollars -- that is well, well, below the
 15 125 million-dollar loan -- then, to save money -- and, I
 16 think that in some places they did -- in some areas of the
 17 credit record, they say in consultation with the Valuation
 18 Services Group "We take fifty percent of the remaining
 19 asset" because, it won't make a difference either way. So,
 20 they just want to save money.
 21 So this fifty percent that they took on several
 22 assets -- actually, in one asset, they took 75 percent
 23 haircut -- they did it after an economic analysis. This is
 24 economic analysis based is not mechanical haircut.
 25 MR. SOLOMON: Move to strike, your Honor.

E.Bartov - Defendant - Cross/Mr.Solomon Page 6490

1 Do you see that?
 2 A. Yes.
 3 Q. Did you review Mr. Haigh's trial testimony?
 4 A. I have.
 5 Q. Were you aware that Mr. Haigh testified, in form
 6 or substance, that, in instances the reported value was
 7 adjusted in their financial analysis by fifty percent, which
 8 was, he thought, a standardized number for commercial real
 9 estate assets?
 10 A. I do remember this testimony, yes.
 11 Q. So you are aware of Mr. Haigh's testimony that DB,
 12 Deutsche Bank, reduced certain of the categories, by fifty
 13 percent, from the amounts reported on the Statements of
 14 Financial Condition, yet you testified, on direct, that
 15 Deutsche Bank, at no time, relied upon the amounts in the
 16 Statements of Financial Condition.
 17 A. Absolutely, there is no contradiction here at all.
 18 THE COURT: "There is no contradiction at
 19 all," is that what you said?
 20 THE WITNESS: Yes, there is no contradiction
 21 at all between these two statements.
 22 Q. If I take the number from the Statement of
 23 Financial Condition and apply a haircut to it, I'm not
 24 relying on that number in the first instance to get to my
 25 final number?

Proceedings Page 6492

1 It was a "yes" or "no," question.
 2 MR. ROBERT: He started out with a question.
 3 He didn't like the answer. Then he tried to change it
 4 to "yes or no." It was, totally, responsive.
 5 MR. SOLOMON: The answer was "yes or no."
 6 MR. ROBERT: No. I do what it says there.
 7 But that's not how the question came out. You stopped
 8 it after Professor Bartov started to answer the
 9 question.
 10 THE COURT: What was the question that was
 11 "yes or no?"
 12 MR. SOLOMON: If I take the number from the
 13 Statement of Financial Condition and apply a haircut to
 14 it, I'm not relying on that number in the first
 15 instance to get to my final number.
 16 Is that your testimony, sir, yes or no?
 17 THE COURT: That's a "yes or no." The
 18 answer is stricken.
 19 MR. ROBERT: Your Honor, I would ask if the
 20 Court reporter check her records. Because, there was
 21 another question before that.
 22 The witness started to answer the question
 23 then, Mr. Solomon rephrased it into a "yes or no" once
 24 Mr. Bartov was a sentence in.
 25 THE COURT: So?

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1 MR. ROBERT: It wasn't a "yes or no." He
2 cut him off in the middle of his answer. It's not
3 reflected in the transcript but, that's what I heard.
4 THE COURT: I don't have the transcript in
5 front of me. I'm not disputing that there might have
6 been some interruption to the question.
7 MR. SOLOMON: Your Honor, the question
8 before that, it say --
9 "THE COURT: There is no contradiction at
10 all? Is that what you said?
11 MR. SOLOMON: Witness answered, "Yes, there
12 is no contradiction at all between the two statements."
13 And then, I asked the question that I
14 previously read.
15 THE COURT: That prior question has nothing
16 to do with this which is a simple, straightforward
17 independent "yes" or "no," question.
18 Mr. Solomon, do you want to repeat it? You
19 want a read back?
20 MR. SOLOMON: So, is your Honor striking the
21 answer.
22 THE COURT: Yes.
23 MR. SOLOMON: Thank you, your Honor.
24 THE COURT: It is pure "yes or no."
25

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1 take a high school dropout and have him apply the fifty
2 percent haircut.
3 MR. SOLOMON: Again your Honor, move to
4 strike everything after the "yes or no" type response
5 to my question.
6 THE COURT: Was it "yes" or "no?"
7 MR. SOLOMON: I believe it was, of course.
8 And then, context dependent. Then, I asked if he was
9 aware. And, he said, "I was aware it was context
10 dependent," and then, went on to explain.
11 THE COURT: After that --
12 MS. HABBA: Your question was not "were you
13 aware. Let's read the record accurately. That was not
14 your question. Your question was:
15 "My question was that Deutsche Bank had a
16 standardized adjustment of fifty percent for commercial
17 real estate."
18 He said, it applied to context.
19 That was your question. You just misstated
20 your question.
21 MR. SOLOMON: The next question was, that
22 was my question, was that Deutsche Bank had a
23 standardized adjustment of fifty percent for commercial
24 real estate.
25 The witness responses "I was aware of it but,

Proceedings Page 6494

1 CROSS EXAMINATION
2 BY MR. SOLOMON
3 Q. If I take the number from the Statement of
4 Financial Condition, take that number exactly as it appears
5 there and apply the haircut to it, is it your testimony that
6 I'm not relying on that number in the first instance to get
7 to my adjusted value?
8 Yes or no?
9 A. In this context, no. In this context, no. In
10 accounting --
11 THE WITNESS: Judge, I want to tell you if I
12 may.
13 THE COURT: No, you can't. You can be
14 redirected.
15 Q. Were you aware, as Mr. Haigh testified in this
16 case, that, Deutsche Bank had a standardized adjusted of
17 fifty percent for commercial real estate?
18 A. Of course; context dependent.
19 Q. That wasn't my question. It was that, Deutsche
20 Bank had a standardized adjustment of fifty percent for
21 commercial real estate?
22 A. I was aware of it but, it applied -- depend on the
23 context. They don't make it -- if they don't apply fifty
24 percent haircut, they don't need the valuation services.
25 They don't need Mr. -- they don't need Mr. Haigh. They can

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1 applied -- depends on the context."
2 And then, he goes on.
3 Question was, "Was he aware of it?"
4 THE COURT: The objection was overruled.
5 The answer is stricken after and what Mr. Solomon just
6 said.
7 MR. SOLOMON: Let's go to page 11, again, at
8 the bottom 11 of 25?
9 THE COURT: The part about "context
10 dependent" that could have been stricken too. I'm not
11 doing that because, you didn't ask for that.
12 MS. HABBA: Your Honor, while we're stopped,
13 I'm not sure what's going on with -- it says, "my
14 notes" now. If you look, line --
15 (Pause in proceedings.)
16 THE COURT: Mr. Solomon.
17 Q. Did Mr. Haigh testify, to your knowledge, that, it
18 was context dependent as to the haircut to be applied to the
19 assets?
20 A. I don't remember these details. You know, I read
21 it a few days ago and I read so many other trial testimonies
22 that I don't remember whether he did or did not. I don't
23 remember if you asked this question to him or not.
24 MR. SOLOMON: Can we please put up
25 Mr. Haigh's trial testimony page 1016 lines three

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1 through 16?

2 "QUESTION: Do you know why, for purposes of

3 the analysis, in the credit report, the \$1.3 billion in

4 reported value of the club facilities was reduced by

5 fifty percent for deriving an adjusted value?

6 "ANSWER: The value, the reported value was

7 adjusted in our financial analysis by fifty percent

8 which was a, I think, standardized number for

9 commercial real estate assets. And the purpose of

10 doing that was just to have a broad sense of what those

11 assets might be worth.

12 "If we were in bad market conditions and we

13 needed to seek repayment from the client and the

14 client's asset had fallen in value, fifty percent

15 represented a number which would be significant and yet

16 we could still look at those assets and see whether

17 there was any equity in those assets; meaning" --

18 And that's the end of the answer. Do you see

19 that?

20 A. I do.

21 Q. Do you see anything about it being context

22 dependent?

23 Yes or no, sir?

24 A. Implicitly, yes.

25 MR. SOLOMON: Let's go back to page 11 of

E.Bartov - Defendant - Cross/Mr.Solomon Page 6498

1 PX302 please.

2 Q. If you look at the entry for "real estate

3 licensing" do you see?

4 A. I do.

5 Q. You can read the entire of the paragraph. I would

6 like to focus here on the last sentence. "For purposes of

7 deriving an adjusted value, we assumed a fifty percent

8 haircut of this asset." Were you aware that have statement

9 in the credit report before you testified on direct

10 examination?

11 A. I was.

12 MR. SOLOMON: Would you please pull up

13 PX293.

14 Q. Do you mean recognize this document, Professor?

15 A. I do.

16 Q. What do you recognize it to be.

17 A. Same documents as before, different date;

18 December 20, 2011.

19 Q. It's the Deutsche Bank credit report credit memo

20 that we were talking about?

21 A. It is. Yes.

22 Q. Could you turn to page six. That's on the bottom

23 six of sixteen.

24 And if you look under "club facilities" --

25 A. Yes.

E.Bartov - Defendant - Cross/Mr.Solomon Page 6499

1 Q. Again, you can read the entirety of the paragraph

2 if you need. But the last sentence, "For purposes of our

3 analysis, the \$1.3 billion in reported value has been

4 reduced, by fifty percent, for deriving an adjusted value."

5 Do you see that?

6 A. I do.

7 Q. Were you aware of that statement in the credit

8 report before you testified on your direct examination?

9 A. Absolutely.

10 MR. SOLOMON: Can you turn to page ten of

11 26 -- excuse me -- ten of 16. Actually, you know what?

12 Let's pull that down for a moment. We'll come back to

13 that.

14 Q. Before we leave this area, I have a fairly simple

15 math question for you?

16 A. Hold on a second. He didn't qualify me as a

17 mathematician.

18 Q. I'm sorry?

19 A. He didn't qualify me as a mathematician, so is it

20 okay.

21 THE COURT: Did you pass high school math?

22 Q. It shouldn't pose a problem.

23 A. Okay.

24 Q. I would like you to assume for a moment --

25 assumption, hypothetical. Let's be clear -- that a stated

E.Bartov - Defendant - Cross/Mr.Solomon Page 6500

1 value on the Statement of Financial Condition for an asset

2 is not the estimated current value. Okay? Assume that for

3 the moment.

4 If Deutsche Bank takes a fifty percent haircut of

5 that number, is it fair to conclude that, that Deutsche Bank

6 adjusted number is not fifty percent of the estimated

7 current value?

8 Yes or no?

9 A. You know, can you repeat the question. It's --

10 MR. SOLOMON: Can I have a read back, your

11 Honor?

12 THE COURT: Read --

13 THE WITNESS: Because, it's a very confusing

14 question I find it.

15 THE COURT: I passed high school math and I

16 understood the question.

17 THE WITNESS: You did?

18 THE COURT: Let's have a read back.

19 (The testimony as requested was read by the

20 reporter.)

21 A. Yes, I understand now. Yes, sorry. You're right

22 it's a simple question. I make too much of it. Thank you

23 for your inquiry. Thanks.

24 THE COURT: Sometimes the simple approach is

25 the best.

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1 THE WITNESS: That's true.
 2 MR. SOLOMON: If we could please pull up
 3 PX293.
 4 Q. Do you have it in front of you, sir?
 5 A. I do yes.
 6 Q. Okay. The date of this report is December 20,
 7 2011, correct?
 8 A. Yes.
 9 Q. And you reviewed this credit memo on your direct
 10 testimony; do you recall that?
 11 A. I do.
 12 Q. Please turn to page six of 16.
 13 You reviewed the valuation for Trump Tower on your
 14 direct testimony.
 15 Do you recall that?
 16 A. I do.
 17 Q. Am I correct that you testified that Deutsche Bank
 18 must have received information from the Trump Organization
 19 as to NOI, net operation income?
 20 A. I couldn't find NOI -- unless I missed it. I
 21 don't remember finding it on the Statement of Financial
 22 Condition. So I assume they got it from Mr. Trump directly.
 23 If it is on the Statement of Financial Condition then, it's
 24 oversight on my part.
 25 Q. Is it your understanding, though, assuming there

E.Bartov - Defendant - Cross/Mr.Solomon Page 6502

1 was no oversight, that, the net operating income for Trump
 2 Tower, that's on the Deutsche Bank credit report, came from
 3 the Trump Organization?
 4 A. Either from the Trump Organization or from other
 5 sources. My assumption is that most likely source would be
 6 the Trump Organization.
 7 Q. Now, if we look further down on this chart, can we
 8 agree that Deutsche Bank conducted a similar analysis when
 9 it calculated the adjusted value for 40 Wall Street?
 10 A. Similar to what?
 11 Q. Similar to the analysis that was done for Trump
 12 Tower that you testified to on your direct?
 13 A. Well, I have to read the --
 14 Q. Please read the analysis as to what they did for
 15 40 Wall Street.
 16 A. Can you go down? Can you scroll down, please?
 17 Okay.
 18 Yes, let me just read.
 19 That's okay. Thank you. Thank you. Thank you.
 20 Yes, it looks similar.
 21 Q. Assuming you didn't miss something or it wasn't in
 22 the Statement of Financial Condition, am I correct that the
 23 only place that Deutsche Bank could have received the
 24 information as to the net operating income and the cap rate,
 25 used by the Trump Organization, was the Trump Organization?

E.Bartov - Defendant - Cross/Mr.Solomon Page 6503

1 A. I would say it is a most likely explanation.
 2 Q. Here you see the NOI is 26.2 million.
 3 Do you see that?
 4 A. I do.
 5 Q. Remember that number if we can. Just keep in
 6 mind. I believe 26.2 is the distance for a marathon if I
 7 recall correctly.
 8 THE COURT: Is the what?
 9 MR. SOLOMON: Distance for a marathon.
 10 THE COURT: I am sure it is 26 point
 11 something.
 12 A rare concession by Mr. Robert.
 13 MR. SOLOMON: Now that we have done this,
 14 we'll agree it is 26.2.
 15 Did you review any documents to confirm
 16 whether any of the NOIs provided by the Trump
 17 Organization to Deutsche Bank were accurate?
 18 A. I didn't perform any audit. I didn't audit any of
 19 the document to verify their accuracy.
 20 MR. SOLOMON: Can we please pull up PX 1573
 21 which was already admitted.
 22 Q. Do you recognize this as an appraisal of 40 Wall
 23 Street?
 24 A. I do.
 25 MR. SOLOMON: Actually, let's just take a

E.Bartov - Defendant - Cross/Mr.Solomon Page 6504

1 step back and let's see if we can confirm the 26.2
 2 number that we looked at.
 3 Can we pull up PX 788, please. I think we
 4 can look at it on the screen, if that's okay, to move
 5 it along.
 6 Can we go to row 118.
 7 Q. Do you recognize the format of this document, sir?
 8 A. Yes, this is the -- I believe the raw paper that
 9 was provided to Mazars.
 10 Q. It was prepared by someone at the Trump
 11 Organization, correct?
 12 A. Yes.
 13 MR. SOLOMON: Can we please turn to row 118
 14 for 40 Wall Street?
 15 Q. Do you see the NOI on this document is 26.234 --
 16 excuse me, \$26,234,400 for 40 Wall Street?
 17 A. I do.
 18 Q. That matches with the 26.2 number we saw on the DB
 19 credit memo, right?
 20 A. Yes.
 21 MR. SOLOMON: Let's take that down and go
 22 back to the appraisal.
 23 Q. And this is as of November 1, 2011, correct?
 24 A. Yes.
 25 Q. And it's done by Cushman & Wakefield, correct?

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1 A. Yes.

2 Q. And they are a well respected firm?

3 A. Not in the business but, I have no reason to

4 disagree with you.

5 Q. You're saying you're not in the appraisal

6 business?

7 A. I'm not in the appraisal business. Yeah, I have

8 my limitation too.

9 Q. Have you seen this document before, Professor?

10 A. You know, I don't think so. I don't think so.

11 Q. This was about fifty days -- November 1st --

12 roughly, fifty days before the date of the credit memo that

13 we were just looking at, correct?

14 A. Yes.

15 THE COURT: Yes.

16 THE WITNESS: Yes.

17 Q. Can we turn it page 140 of the appraisal? This is

18 a chart showing revenue and expenses, correct?

19 A. Yes.

20 MR. SOLOMON: If we scroll down to the

21 bottom, the last line, "net operating income."

22 Q. Do you see that?

23 A. Where? Can you highlight it?

24 MR. SOLOMON: Please?

25 A. Yes, I see it.

E.Bartov - Defendant - Cross/Mr.Solomon Page 6506

1 Q. The net operating income, according to this

2 appraisal for 40 Wall Street is \$6,236,273.

3 Do you see that?

4 A. I do.

5 Q. But as you recall, the number given to Deutsche

6 Bank, by Trump Organization and as reflected on the

7 supporting spreadsheet, was 26.2 million, correct?

8 A. Correct.

9 Q. Before I show this to you, were you aware that the

10 Trump Organization provided a different number for the net

11 operating income, for 40 Wall, that was more than four times

12 greater than the NOI contained in the appraisal?

13 A. I didn't review the appraisal. So --

14 Q. Is that a no?

15 A. I didn't review the appraisal. There is no way

16 for me to know about it.

17 Q. Assume that the Trump Organization provided a

18 grossly inflated number to Deutsche Bank for the net

19 operating income, then the DB adjusted valuation, for 40

20 Wall, would be inflated as well, correct?

21 A. I didn't -- I don't agree with your premise. So,

22 your question doesn't make sense to me.

23 Q. I am asking you -- okay.

24 You don't agree with the premise that the Trump

25 Organization provided inflated number to Deutsche Bank for

E.Bartov - Defendant - Cross/Mr.Solomon Page 6507

1 the net operating income at 40 Wall?

2 A. Absolutely, no.

3 Q. Let's assume they did.

4 A. Assume?

5 Q. Assume that the number was inflated?

6 A. Okay.

7 Q. Would the Deutsche Bank adjusted number for 40

8 Wall be inflated?

9 Yes or no?

10 A. Yes.

11 Q. Do you recall being asked, on direct examination,

12 some questions about 40 Wall Street and what you would do if

13 a student walked into your class and told you they valued 40

14 Wall at 200 million?

15 A. Yeah. Yes.

16 Q. If you don't remember the testimony, I can put up

17 the testimony.

18 A. I think, I remember.

19 Q. What did you say you would do?

20 A. I said that my definition -- "By definition,

21 estimated current value must be higher than liquidation

22 value. So if a student come with a estimated current value

23 that is well below liquidation value, this valuation must be

24 flawed."

25 Q. Did you say that if the student came to you with

E.Bartov - Defendant - Cross/Mr.Solomon Page 6508

1 200 million dollar valuation for 40 Wall Street, in 2011,

2 you would tell them, quote, this is impossible?

3 A. Yes, I did. Given the -- yes. Given the

4 circumstances of this case, yes. It is all in context of

5 this case. Yes.

6 Q. Remember that \$200 million number and your

7 testimony that it's impossible -- the valuation?

8 A. Yes.

9 MR. SOLOMON: Can you please turn to page

10 three of the appraisal.

11 Q. Can you read what the market value, as is, at the

12 bottom, determined by Cushman & Wakefield?

13 A. 200 millions.

14 MR. SOLOMON: Let's turn to the creation of

15 personal financial statements.

16 Q. Can we agree that ASC 274 addresses personal

17 financial statements?

18 A. Yes.

19 Q. Can we also agree that personal financial

20 statements are required to include sufficient disclosures to

21 make the statements adequately informative?

22 A. Absolutely, yes. Because, you cut it and paste it

23 from the standard.

24 MR. SOLOMON: Can we pull up PX 1609,

25 please?

E.Bartov - Defendant - Cross/Mr.Solomon Page 6509

1 Q. Do you recognize this document, Professor?
 2 A. Yes, it seem to be ASC 274.
 3 Q. If we could please turn to page 13 of 21. So the
 4 number 13 on the bottom. If you look at 55-1.
 5 That's under "Implementation guidance for
 6 estimated current value," correct?
 7 A. Yes.
 8 Q. "This implementation guidance addresses estimated
 9 current value. Recent transactions involving similar assets
 10 and liabilities in similar circumstances ordinarily provide
 11 a satisfactory basis for determining the estimated current
 12 value of an asset and the estimated current amount of a
 13 liability.
 14 "If recent sales information is unavailable, other
 15 methods that may be used include any of the following" --
 16 And then, it goes on to list five other methods,
 17 correct?
 18 A. This is not related to real estate. For real
 19 estate, there's a different paragraph.
 20 Q. Is it your testimony that you -- that one cannot
 21 use this particular provision, 55-1, for estimating the
 22 current value of real estate?
 23 A. I am saying that --
 24 Q. Yes or no?
 25 A. Context dependent.

E.Bartov - Defendant - Cross/Mr.Solomon Page 6510

1 Q. So, it could apply to real estate.
 2 A. Hypothetically, yes. But, expert accountants
 3 would not use it. They would use a paragraph that directly
 4 relate to real estate; that say, "For real estate this is
 5 the guidance."
 6 If I have a direct guidance for real estate, why
 7 would I use guidance that does not, directly, relate to real
 8 estate?
 9 I'm just telling you how expert accountants works.
 10 That's all.
 11 MR. SOLOMON: Move to strike anything after
 12 the yes, your Honor?
 13 THE COURT: Please reread the question and
 14 the first word of the answer.
 15 (The testimony as requested was read by the
 16 reporter.)
 17 THE COURT: Stricken after that. Could
 18 apply to real estate. Than could be redirected.
 19 Q. Sir, in your opinion, looking at this provision if
 20 recent sales information, involving similar assets, is
 21 available, is someone preparing a personal financial
 22 statement, in accordance with these guidelines, free to use
 23 any of the other methods?
 24 A. I think so. We talk about real estate. When we
 25 take about real estate, yes. Because, the guidance for real

E.Bartov - Defendant - Cross/Mr.Solomon Page 6511

1 estate is different than this guidance. It is different
 2 than this guidance.
 3 (Whereupon, the following proceedings were
 4 stenographically recorded Shameeka Harris.)
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Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6512

1 CONT'D CROSS-EXAMINATION
 2 BY MR. SOLOMON:
 3 Q Can we please pull up -- is it your testimony that the
 4 specific section with respect to real estate trumps 55-1 when it
 5 comes to valuing real estate assets for estimated current value?
 6 A That's my opinion, yes.
 7 Q And is that because you have to ensure, when looking at
 8 274, that all of the guidance is considered when reaching a
 9 conclusion?
 10 A No, because in accounting when a specific provision
 11 about the transaction, this specific provision trumps general
 12 provision. That's the rule in accounting.
 13 Q Is there anywhere in this general provision that says
 14 you cannot apply it to real estate?
 15 A That's not the question. You can do whatever you want
 16 but that's not how accountants do it.
 17 THE COURT: It is --
 18 A Accountants look for the best solution not the worst
 19 solution.
 20 THE COURT: That does not answer the question.
 21 That's what we call nonresponsive. Do you want the question
 22 read back?
 23 MR. SOLOMON: Please.
 24 MR. KISE: Your Honor, that's responsive in his
 25 field.

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1 THE COURT: It was not. Overruled. Read back.
 2 (Whereupon, the requested testimony was read back
 3 by the court reporter.)
 4 Q Yes or no question, sir?
 5 A No, it's impossible to answer. I'll say, no, you
 6 can't. If you want a misleading answer, I'll say no.
 7 THE COURT: Okay. That answers the question. The
 8 answer was no. It was obvious just from looking at the
 9 guidance.
 10 Q Can we please pull up 787 --
 11 MR. KISE: Now, we want misleading answers. That's
 12 what we are encouraging in the courtroom. The witness said
 13 he can't answer the question. If you want a misleading
 14 answer, I'll say no. That's acceptable? It's preposterous.
 15 MR. SOLOMON: With all due respect, the witness
 16 should have stopped with I can't answer the question. I
 17 don't think that's anywhere in any of my questions.
 18 MR. KISE: Every one of your questions is asking
 19 for a misleading answer. This whole thing is just a gotcha
 20 game. That's fine. Objection noted. I don't think that we
 21 should possibly be allowing misleading answers. The witness
 22 says he is being mislead and the Court is just going to
 23 allow that to continue then, then that alone should be a
 24 basis for a mistrial. You can't have evidence come in that
 25 isn't -- I know it's funny to the Government because they

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1 don't really care about evidentiary rules or anything else.
 2 So that's fine. I know they want to chuckle and laugh like
 3 they are in grade school so...
 4 MR. SOLOMON: Your Honor, do we actually need this.
 5 The witness has given an answer. Counsel has made his
 6 objection on the record as to the situation.
 7 MR. KISE: Fair enough. My objection is on the
 8 record.
 9 MR. SOLOMON: The record is clear.
 10 THE COURT: You know, this trial is complicated
 11 enough. When the question is is this language include
 12 certain -- does this statement include certain language and
 13 it doesn't, the answer is no. I don't see what we are
 14 arguing about here.
 15 MS. HABBA: Your Honor, I'm sorry. I am reading
 16 his answer. He says it is impossible to answer. Then we
 17 are cornering the witness to give a yes or no answer when
 18 he's saying it's impossible to answer.
 19 THE COURT: How could it not be possible to answer
 20 the question whether certain language is in a statement that
 21 is on the screen.
 22 MS. HABBA: Your Honor, we can't force the witness
 23 to give a yes or no answer when he can't give a yes or no
 24 answer. That's completely improper. I join Mr. Kise in his
 25 objection.

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1 THE COURT: Mr. Solomon, what would you like to do?
 2 MR. SOLOMON: I would like to note when the witness
 3 said it is not possible I didn't ask a followup question. I
 4 didn't force him to answer yes or no. If I tried to pursue
 5 that, they would have said I was harassing the witness. I
 6 asked. He said it is impossible to answer yes or no and
 7 then he proceeded to say if you want a misleading answer. I
 8 am satisfied with the answer it's impossible to say yes or
 9 no.
 10 THE COURT: We will interpret it as we see fit.
 11 Let's move on.
 12 CONT'D CROSS-EXAMINATION
 13 BY MR. SOLOMON:
 14 Q We have pulled up on the screen PX787. That's the
 15 June 30, 2011, statement of financial condition. If you turn to
 16 page six. That's on the bottom, 6 of 22. Under basis of
 17 presentation, the second paragraph, do you recall being asked
 18 questions on direct examination about the paragraph beginning
 19 such valuation methods include?
 20 A I do.
 21 Q If an issue includes this paragraph in a statement of
 22 financial condition, is it free to misrepresent valuations or
 23 other information in its statement of financial condition?
 24 A No.
 25 Q If an issue include this paragraph in its statement of

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1 financial condition, is it free to knowingly misrepresent facts
 2 within its knowledge in the statement of financial condition?
 3 A What do you mean? Can you give me an example of
 4 knowledge and facts specifically here what are you talking
 5 about?
 6 Q We've talked about dates in this trial. So today is
 7 Tuesday, right?
 8 A Yes.
 9 Q If a statement of financial condition it -- the person
 10 who's issuing the financial statement knows it's Tuesday but
 11 puts in the statement of financial condition that today is
 12 Wednesday, that's a knowing misrepresentation, right, with that
 13 example? Is an issuer, if they include this paragraph, free to
 14 knowingly misrepresent facts in its knowledge in the statement
 15 of financial condition?
 16 A No.
 17 Q Do you recall testifying on direct examination in form
 18 or substance that you tell your students every day in class that
 19 every word matters, every single word matters?
 20 A I do.
 21 Q Can we pull up his affidavit from August 31, 2023.
 22 Sir, sir, it's on the screen. If we can turn to paragraph 24 of
 23 your affidavit. Actually, before we do that, do you recall
 24 signing this affidavit in this case?
 25 A I do.

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1 Q Let's go to paragraph 24. Quote, Mr. Trump's SOFC's
 2 for 2011 through 2021 did not impact significantly Deutsche Bank
 3 decisions to extend loans to defendants or to set these loans
 4 interest rate, paren, see Exhibit A at 25-32 period, close
 5 paren.
 6 Do you see that?
 7 A I do.
 8 Q You chose in your affidavit to modify and limit your
 9 statement by using the word significantly, correct?
 10 A Did I modify from what?
 11 Q Your statement in paragraph 24 --
 12 A Yes.
 13 Q -- is modified. It is not absolute. It does not say
 14 did not impact. It says did not impact significantly. You
 15 chose to use the word or add the word significantly, correct?
 16 A Yes, I do. And maybe I should have used the word
 17 materially.
 18 THE COURT: Stricken. If you want.
 19 MR. SOLOMON: Yes, Your Honor.
 20 THE COURT: Professor Bartov, the question was did
 21 you use that word.
 22 THE WITNESS: Significant, yeah. I use it right
 23 here.
 24 THE COURT: That answers the question.
 25 THE WITNESS: I see.

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1 Q It was an intentional choice by you to use the word
 2 significantly; is that correct?
 3 A I don't know what you mean.
 4 Q Yes or no?
 5 A I don't know what you mean by intentionally.
 6 Q Did you write this affidavit?
 7 A I did.
 8 Q Did you review it before you signed it?
 9 A I did.
 10 Q Did you ensure that everything in this affidavit was
 11 correct before you signed it?
 12 A I did, yes.
 13 Q So you chose to use the word significantly?
 14 A I did.
 15 Q Is that correct?
 16 A Yes.
 17 Q Let's look at the next paragraph 25. And you can look
 18 at the entirety of the paragraph, but I'd like to focus on after
 19 the dash demonstrates that Deutsche Bank's reliance on the
 20 information in the SOFC's was marginal in deciding whether to
 21 extend the subject loans and what interest rate to charge; do
 22 you see that?
 23 A I do.
 24 Q Here again you chose to limit your statement this time
 25 by using the word marginal, right?

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1 A That's true.
 2 Q And was that intentional on your part?
 3 A I mean, maybe, marginal is not the best word. Maybe,
 4 there is another word that will slightly describe it better but
 5 the idea is that, yes, I choose to communicate this idea this
 6 way but, you know, if your point is marginal is not the best
 7 word then I should use maybe slightly a different word in the
 8 dictionary, that may be but the idea I definitely support the
 9 idea here.
 10 Q Sir, I'm not criticizing in any way, shape or form what
 11 word you chose to use, but I am asking you to analyze and
 12 analyze for this court the word you chose to use, very
 13 succinctly. You chose to use the word marginal instead of
 14 having an absolute statement, correct?
 15 A What do you mean by absolute statement?
 16 Q An absolute statement would be Deutsche Bank did not
 17 rely on the information in the SOFC's. You said Deutsche Bank's
 18 reliance of -- the information in the SOFC's was marginal. You
 19 qualified that, correct, yes or no?
 20 A Yes, I did.
 21 Q Okay. Can we go back to paragraph 17. "Mr. Trump's
 22 SOFC's for 2011 through 2021 were prepared in a personal
 23 financial statement format in accordance with ASC 274 and the
 24 valuation of investment properties recognized in those SOFC's
 25 were generally consistent with the notion of estimated current

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1 value." Do you see that?
 2 A I do.
 3 Q Here again you chose to limit your statement by using
 4 the word generally instead of having an absolute; is that
 5 correct?
 6 A Yes.
 7 Q And that was intentional on your part, correct?
 8 A That was intentional, yes.
 9 Q Is it your opinion, as you sit here -- withdrawn.
 10 Did the inclusion of the word generally have any
 11 significance?
 12 A No.
 13 Q Did the inclusion of the word marginal in the other
 14 paragraph have any significance?
 15 A No, in the context of this litigation. Just the way of
 16 talking but it is the same thing. If I have generally, omit
 17 generally, in this litigation, the message is the same.
 18 Marginal, I put it in, you put it out, the message is the same.
 19 Q Keeping in mind your prior testimony that every single
 20 word matters?
 21 A It does.
 22 Q Please let me finish. Your testimony was that every
 23 single word matters. Now, it's your testimony that the
 24 inclusion of those words have no significance, yes or no?
 25 A This words has no significance on the general message

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1 that I am trying to convey here.

2 Q Professor Bartov, assume that in various statements of

3 financial condition between 2011 and 2021 the following facts.

4 Mr. Trump Triplex was overvalued. Seven Springs, do you

5 remember that property in Westchester, that was overvalued.

6 Mr. Trumps US golf courses were overvalued. The rent stabilized

7 units at Trump Park Avenue were overvalued in the statement of

8 financial condition. 40 Wall Street was overvalued. Mar-a-Lago

9 was overvalued. The Aberdeen Golf Course from Scotland was

10 overvalued, unrestricted cash was overstated, licensing deals

11 were overvalued. Assume all of those facts for the moment,

12 okay.

13 A These are hypotheticals. They are no related to this

14 case. They are hypotheticals, yes.

15 Q They are related to the case insofar as I describe

16 properties in the statement of financial condition. As a

17 hypothetical, I am asking you to assume all of those facts are

18 true that I just read off?

19 A Okay.

20 Q If all of those foregoing facts were true, would you

21 consider the cumulative effect of each individual misstatements

22 in determining materiality, yes or no?

23 A There is no way I can answer it as a yes or no question

24 because it depends on the methodology I used to calibrate

25 materiality. There are many different ways, as the accounting

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1 literature clearly say, there are many, many different

2 approaches to test materiality and depending on the approach you

3 choose.

4 Q Would you consider all of them at least in determining

5 which approach you might use to determine materiality?

6 A I definitely consider the quality of this valuation and

7 if you want, I can explain what it means.

8 Q I'm not asking you to explain it. I am asking you if

9 you would consider all of those facts that I've asked you to

10 assume when you're determining the methodology or other ways

11 that you would look at materiality? So would you consider all

12 of those facts, yes or no?

13 A Yes.

14 Q Let's talk about the notes to the statement of

15 financial condition. If we can pull up PX1609, please, and go

16 to page ten. You'll see that -- well, are you familiar with

17 this section, sir?

18 A Yes.

19 Q This is the disclosure-general, right?

20 A Yes.

21 Q Okay. 50-2, personal financial statement disclosure

22 shall include, but are not limited to, all of the following:

23 And then it lists several items; do you see that?

24 A I do.

25 Q Under C --

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1 A Yes.

2 Q -- either of the following:

3 One, the methods used in determining the estimated

4 current values of major assets and the estimated current amounts

5 of major liabilities.

6 Two, the methods used in determining the major

7 categories of assets and liabilities; do you see that?

8 A I do.

9 Q Should there have been an "or" between 1 and 2.

10 Withdrawn.

11 How would you read that? Would you read in the word

12 "or" between 1 and 2?

13 A Yes.

14 Q So it's in the alternative?

15 A Yes.

16 Q Have you formed an opinion as to whether Donald Trump's

17 statements of financial condition for all of the years between

18 2011 and 2021 satisfy this requirement in "C"?

19 A Well, as far as I remember, in my reports, I don't

20 address this question, as far as I remember. My memory is also

21 that Mr. Flemmons did address this. This is my recollection,

22 but I did not address it in my report.

23 MR. SOLOMON: May I have a read back of the

24 question, Your Honor.

25 THE COURT: Read back the question, please.

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1 (Whereupon, the requested testimony was read back

2 by the court reporter.)

3 MR. SOLOMON: I'm not sure the answer was

4 responsive. He indicated it was not in his report. I am

5 asking if he formed an opinion.

6 THE COURT: I don't know where we are. I

7 understand the question.

8 MR. SOLOMON: Right. His answer was he didn't form

9 an -- he didn't put it in his report. So could I have a

10 direction to the witness to answer the question?

11 THE COURT: That's not responsive. Did you

12 consider whether according to "C", 1 or 2 is used.

13 A Okay. I just don't want to clarify, yes. So, I did

14 consider it. I did consider it. Yeah, but I -- yes, I did

15 consider it at one point.

16 Q And did you reach a conclusion as to whether all of the

17 statements of financial condition between 2011 and 2021 complied

18 with "C"?

19 A Well, my -- my opinion was that -- that the statement

20 did not violate this paragraph.

21 THE COURT: Did not violate.

22 Q Did not violate. So you believe that all of the

23 statements of financial condition complied with paragraph "C";

24 is that correct?

25 A That's was my -- again, this is my recollection.

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1 THE COURT: Five-minute warning.
 2 Q Can we pull up PX730 which is already in evidence. We
 3 put in front of you what's been marked as PX730 which is already
 4 in evidence, the June 30, 2014, statement of financial condition
 5 for Donald J. Trump; do you have that, sir?
 6 A I do.
 7 Q As you sit here today, do you know, one way or the
 8 other, if all of the -- I want to make sure I read this so I
 9 don't get an objection. "All of either the methods used in
 10 determining the estimated current values of major assets and the
 11 estimated current amounts of major liabilities or the methods
 12 used in determining the major categories of assets and
 13 liabilities are disclosed and accurate in this statement of
 14 financial condition"?
 15 A We don't use accurate in accounting. Accurate is not
 16 defined. We say fairly represent. But the point is my -- my --
 17 you didn't ask me how I form my opinion. I form my opinion
 18 based on reading the financial statement and you have a "or".
 19 You have either "or". So either the methodology or the
 20 classification of the assets on the balance sheet. Right, the
 21 second -- what is the second -- the categories, right, the
 22 second talk about so you don't have to disclose both it's
 23 either --
 24 Q The second, just so we're clear, could you put it back
 25 up on the screen so there is no misunderstanding, please. The

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1 second speaks to method.
 2 A Yeah, method of what? Method of -- method of --
 3 Q Let's put it up on the screen so there is no
 4 misunderstanding, sir.
 5 A Methods used to determine the major categories of
 6 assets and liabilities. The major categories of asset
 7 liabilities in my opinion are clearly stated on the statement of
 8 financial condition.
 9 Q And the second part of my question was, as you sit here
 10 today, do you believe that they are -- I used the word accurate,
 11 let's use your word -- fairly represented on the statement of
 12 financial condition?
 13 A My opinion is, yes, the second one, the second one,
 14 method used to determine major categories, are clearly stated in
 15 the statement of financial condition.
 16 Q And are you aware of any situation in which a method
 17 that is described on the statement of financial condition is not
 18 the method that was used to obtain the estimated current value
 19 of the asset referred to or stated on the SOFC's?
 20 A You're talking about categories of asset. Where are --
 21 where do you get estimated current value here. You just talking
 22 about method used to determine major categories. This --
 23 Q Are you aware, as you sit here today, of any situation
 24 in which either one or two under "C", which is described in the
 25 statement of financial condition, it's your testimony that

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1 either one or two are described for all of the major assets,
 2 right?
 3 A Yes, that is my testimony.
 4 Q Are you aware of any situation where whatever that
 5 disclosure or description is it is not accurate or doesn't
 6 fairly represent the actual method that was used, yes or no?
 7 A Materially, materially or not materially? Not
 8 materially it doesn't matter. Materially, I don't remember. I
 9 don't remember finding any material misstatement with connection
 10 to the category -- this -- describing the categories of
 11 estimated liability. I didn't look for --
 12 Q What about not materially?
 13 A I didn't look for them.
 14 THE COURT: Okay. Perfect timing. See you all at
 15 11:45. I will order the witness not to discuss his
 16 testimony of the case or anything related to them during the
 17 break.
 18 (Whereupon, the witness was excused from the
 19 stand.)
 20 (Whereupon, a recess was taken.)
 21 COURT OFFICER: All rise, Part 37 is back in
 22 session. Please be seated and come to order.
 23 THE COURT: Okay. Let's get the witness back,
 24 right.
 25 (Whereupon, the witness resumes the witness stand.)

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1 MR. SOLOMON: May I proceed, Your Honor.
 2 THE COURT: Please do.
 3 MR. SOLOMON: Thank you.
 4 CONT'D CROSS-EXAMINATION
 5 BY MR. SOLOMON:
 6 Q Professor Bartov, you testified on direct that given
 7 his cash on hand in June of 2011 Mr. Trump could have
 8 self-financed the Doral Project, do you recall that?
 9 A I do.
 10 Q And you later testified that given his cash on hand in
 11 2013 Mr. Trump could have self-financed all of the 232 million
 12 he borrowed on the Doral and Chicago Project; do you recall
 13 that?
 14 A Yes, I do.
 15 Q That was where we looked at the 125 and 107 and added
 16 those together?
 17 A Yes.
 18 THE COURT: One at a time. Don't talk over each
 19 other.
 20 Q Could we please pull up PX707 and go to page four.
 21 Under cash and marketable securities, 339,100,000; do you see
 22 that?
 23 A I do.
 24 Q And was that the number you were using when you
 25 testified that Mr. Trump could have self-financed the projects?

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1 A No.

2 Q What number were you using?

3 A I talk roughly but this number need to be adjusted

4 based on the information in the footnote. You never read the

5 financial statement by restricting yourself to what is written

6 in the body of the statement. What is written in the footnote

7 is an integral part of the title. You have to read it

8 altogether. If you read the footnote, you can see that some

9 assets are not as liquid as some other assets so the numbers

10 need to be adjusted. I didn't do the exact calculation. I say

11 ballpark he could have financed it by himself. If not, he might

12 need to borrow 20 million or 30 million or whatever. He didn't

13 have to borrow 200 something million. That's what I meant by

14 that.

15 Q So today you use the term ballpark. I -- did you use

16 that term yesterday in response to questions on your direct

17 examination when you were saying he could have financed the

18 project himself?

19 A They didn't -- they didn't ask me about the 339. They

20 didn't ask me about the specific number. They didn't ask me to

21 provide this detail. So you asked me a different question, so

22 you got a different answer.

23 Q So with respect to the cash and marketable securities

24 that Mr. Trump held, as adjusted based upon whatever adjustment

25 you would make, would you consider that Mr. Trump would have to

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1 sell marketable securities to finance the projects?

2 A Absolutely.

3 Q Did you calculate or consider how much he would have to

4 pay in taxes on any potential gains on those sales?

5 A No.

6 Q Did the amount of potential taxes figure into your

7 answer on self-financing?

8 A Well, as I said --

9 Q Yes or no question, sir?

10 A I used ballpark numbers.

11 Q Did the amount of taxes Mr. Trump would have to pay on

12 any potential gain factor into your answer when you said --

13 A Yes, it did. Yes.

14 Q So a moment ago you said you didn't know if there would

15 be any gains but you factored in taxes?

16 A I used ballpark numbers, rough number.

17 Q Do you know how much of the cash in any -- at any point

18 in time was held in operating entities?

19 A It varies over here, I believe.

20 Q Did you know how much cash was held in operating

21 entities when you concluded that he could have self-financed the

22 projects?

23 A Again, I use it a ballpark number. And I remember that

24 they use -- in different fields, different numbers.

25 Q Did you know, yes or no, sir, how much cash was held in

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1 the operating entities when you testified under oath that Mr.

2 Trump could have self-financed the projects, yes or no?

3 A I use my general recollection not the specific number.

4 So the answer is no, whatever you want it to be. I just

5 explained. I just give you the details.

6 Q Did you consider how much cash these operating entities

7 needed to fund their daily operations when you testified under

8 oath that Mr. Trump could have self-financed?

9 A Yes.

10 Q Did the amount of cash needed by these entities to fund

11 their operations figure into your conclusion that Mr. Trump

12 could have self-financed these projects?

13 A Roughly, yes.

14 Q Are you aware that Mr. Trump had committed to put

15 equity into the Doral resort in order to bring it back to a

16 luxury condition?

17 A Yes.

18 Q Are you aware that at the origination of the Doral loan

19 Mr. Trump had committed to put \$50 million of equity into the

20 resort?

21 A Yes.

22 Q And are you aware that by 2013 that equity infusion had

23 risen to between 150 and \$160 million?

24 A Yes.

25 Q And did that equity infusion of 150 to \$160 million

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1 factor into your conclusion that Mr. Trump could have

2 self-financed the projects?

3 A If he self-financed the project, he might not have --

4 if he self-financed the Doral loan, he might not have done this

5 project, this additional injection of money. This is a

6 completely hypothetical situation.

7 Q Isn't the fact or isn't your claim that he could have

8 self-financed these projects a completely hypothetical situation

9 since he didn't do it, yes or no?

10 A Say it again?

11 Q Sure. You are saying that the equity infusion is a

12 hypothetical if Mr. Trump had self-financed. Isn't your

13 hypothetical that he could have self-financed because he didn't

14 actually do it?

15 A Of course it is a hypothetical. Everything, yes.

16 Q So, let's assume that he did put in the 150 -- 150

17 million to 160 million to renovate Doral, okay. Assume that for

18 the moment. Would that alter your conclusion that he could have

19 self-financed both projects?

20 A The investment --

21 Q Yes or no, sir. Would it have altered your

22 conclusions?

23 A This question is inaccurate because first he took the

24 loan and then he put the money. So if he took -- if he

25 self-financed, he may not put the money in later on to keep

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1 money.

2 Q So Doral would have remained a rundown old facility as

3 it was when Marriott owned; it is that your testimony?

4 A If you know better how to manage the business of Trump,

5 you could do it. I'm not managing the business for him. I'm

6 just saying it's all hypothetical. It's all hypothetical.

7 Those questions arose because hypothetically DB would not have

8 given him the loan. So this is all hypothetical. So there is

9 no evidence of it, but, hypothetically, if DB would not have

10 given him the loan, hypothetically, then, hypothetically, one

11 way to deal with it would be to self-finance it. That's all I'm

12 saying. It's all hypothetical.

13 Q If he self-financed it, it wouldn't be the beautiful

14 luxury resort that it's claimed to be; is that correct?

15 A I don't know what to do next. It is a hypothetical.

16 Q He would not have the cash to do that, correct?

17 MR. KISE: Objection. Is that hypothetically he

18 wouldn't or actually he wouldn't?

19 THE COURT: I guess it is hypothetically.

20 MR. SOLOMON: Hypothetically.

21 Q He didn't self-finance, but if he did, hypothetically,

22 as the example you said you've given, the self-finance is a

23 hypothetical, would he have been able to bring back Doral to a

24 luxury resort status?

25 A This is absolutely hypothetical, and I can't answer

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1 this question because he didn't do it.

2 Q Okay.

3 MR. KISE: Your Honor, I keep waiting for Alice or

4 the white rabbit to come through the door. I mean, I don't

5 really understand where we are right now. These

6 hypotheticals are so widely inappropriate.

7 MR. WALLACE: So is counsel commenting on the

8 questions and answers of the witness.

9 THE COURT: I'll allow Mr. Solomon to proceed.

10 MR. SOLOMON: Thank you, Your Honor.

11 Q Do you know, if by 2013 The Trump Organization had

12 provided an equity infusion into Doral of between 150 and

13 \$160 million?

14 A They did.

15 Q They did. That's not a hypothetical, right?

16 A That is not a hypothetical.

17 Q Can we put up the -- do you understand the equity

18 infusion refers to Donald Trump's own funds or The Trump

19 Organization own funds?

20 A Yes.

21 Q Do you know how much money The Trump Organization of

22 their own monies wind up spending to renovate Doral?

23 A My recollection, 160 million.

24 Q Could we pull up D1019 at page 84. This is an exhibit

25 from the defendants, Professor Bartov. Do you see the statement

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1 on the screen that The Trump Organization invested over

2 \$250 million into renovating every inch of this iconic property

3 including the feigned blue monster golf course?

4 A I see that, yeah.

5 Q Did you consider the \$250 million that was allegedly

6 spent in renovating every inch of the property in reaching your

7 conclusion that Mr. Trump could have self-financed the two

8 projects, yes or no?

9 A It's irrelevant. It's irrelevant because as I said if

10 he hypothetically self-financed the \$125 million loan, he might

11 take a different course of action in term of the renovation. It

12 is completely hypothetical. I don't know. You have to ask

13 Mr. Trump what would have he done had he self-finance it. My

14 point is that in 2012 before he invest this he could have

15 self-finance the Doral loan himself that's all.

16 Q Then would you agree with me if he self-financed he

17 wouldn't have the \$250 million in his own funds to renovate

18 every inch of the iconic property if he self-financed?

19 A I have no idea. He could get a partner in to help him

20 finance it. He could sell another asset to find something. He

21 could maybe generate. He doesn't have to pay interest now. So

22 he'll have more cash. I don't know. It's too many

23 hypotheticals to know what -- what he would have done had he

24 self-financed.

25 Q So you don't know one way or the other, correct?

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1 A That's right.

2 Q Let's talk about reverse engineering for the moment?

3 A Sure.

4 Q Are you familiar with that term?

5 A I do. I used it in one of my reports, I believe,

6 right. Maybe not. Yeah.

7 Q With respect to valuations on a statement of financial

8 condition, what does the term reverse engineering mean?

9 A Reverse engineering mean that you first pick up a value

10 and then you pick a model in an assumption to justify this

11 value.

12 Q In one of your reports or affidavits, on direct

13 testimony, you mentioned Aswath Damodaran, did I pronounce that

14 correctly?

15 A I think so, yeah.

16 Q Who's is he again?

17 A He is my colleague. He is a very well-known professor

18 in the finance department of NYU and on Wall Street he is known

19 as the dean of valuation.

20 Q Do you agree with his statement that you cite to in

21 your affidavit that, in fact, in many valuations, the price gets

22 set first and the valuation follows?

23 A I don't have a reason to disagree with him. He is the

24 leader in this area.

25 Q I understand you may not have a reason to disagree with

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1 him but do you agree with him?
 2 A I do agree with him, yes.
 3 Q Do you understand that statement to mean that the
 4 price; namely, the desirable result of the valuation exercise,
 5 is set first and then the valuation model and assumptions are
 6 chosen to justify the preset target price?
 7 A That's what is the -- reverse engineering is.
 8 Q Do you know if any of the stated valuations for any of
 9 the assets on the statements of financial condition between 2011
 10 and 2021 were reversed engineered?
 11 A I didn't see any evidence of that.
 12 Q Did you look?
 13 A I did look for the methodology. I -- I'm not serving
 14 as a valuation expert, but I did investigate the methodologies
 15 and the methodologies that Mr. Trump used to value these assets
 16 are 100 percent consistent with GAAP. I didn't find any GAAP
 17 violation in the methodology used.
 18 Q My question though wasn't whether you found any GAAP
 19 valuation. My question was do you know one way or the other if
 20 any of the valuations on the statements of financial condition
 21 were reversed engineer? Whether or not they complied with GAAP,
 22 do you know if they were reversed engineer?
 23 A I have no knowledge of that.
 24 Q Okay. You talked about what you -- you just mentioned
 25 about what you had reviewed. Let's talk about what you reviewed

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1 before providing your opinions in testifying. We looked at an
 2 excel spreadsheet earlier; do you recall that?
 3 A I do.
 4 Q Is it your understanding those were delivered to Mazars
 5 to help them do their compilation process each year?
 6 A Yes, I agree. That's it, yes. Absolutely.
 7 Q In the course of preparing your opinion though, you
 8 only reviewed 2 or 3 of those supporting data spreadsheets,
 9 correct?
 10 A That's true. I used like --
 11 Q That's because after reviewing those 2 or 3
 12 spreadsheets you determined they were not relevant to your
 13 analysis, correct?
 14 A That's true.
 15 Q Did you review any of the work papers prepared by
 16 Mazars in the course of compiling the statements in connection
 17 with either your opinions, your affidavits or your testimony
 18 here?
 19 A The work papers -- so I looked in preparation for
 20 this -- for this testimony today. I did look on all the
 21 supporting documents that were delivered to -- that were
 22 delivered to Mazars. And I looked also, before delivering my
 23 rebuttal report, I read Professor Lewis report and Professor
 24 Lewis I don't remember if he had the supporting document or he
 25 have the Mazars work paper. I don't remember that but that's

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1 what I looked at.
 2 Q Is it your testimony that you reviewed all of the --
 3 all of Mazars work papers before your testimony today?
 4 A Not Mazars work paper, the supporting data that was
 5 provided to Mazars by Trump Organization.
 6 Q So are you referring to that supporting data
 7 spreadsheet we looked at earlier today?
 8 A Yes.
 9 Q And your testimony is that you reviewed all of those
 10 supporting data spreadsheets?
 11 A In preparation for the trial, yes.
 12 Q But not in preparation for your report or your
 13 affidavit, right?
 14 A That's true.
 15 Q Or your rebuttal report, right?
 16 A That's true.
 17 Q You didn't -- did you review Mazars work papers in
 18 connection with either your opinion, your affidavits or your
 19 testimony here today?
 20 A As I said, if they are included in Dr. Lewis report, I
 21 did but I didn't look at them independently. I don't remember
 22 whether they are in included in Dr. Lewis report or not.
 23 Q But in coming to your opinions, you didn't think the
 24 Mazars supporting -- withdrawn.
 25 In coming to a conclusion or coming to your opinions in

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1 your reports, did you think the Mazars work papers were
 2 relevant?
 3 A To the question that I was answering in my rebuttal
 4 report in my affirmative report, I didn't think that I need
 5 them.
 6 Q Okay. Is that, sir, because once you have enough
 7 evidence to support your analysis and conclusion you stop
 8 looking?
 9 A That's true, yeah, that was my argument in the
 10 deposition, yes.
 11 Q Professor Bartov, did you read the opinion on the party
 12 respective summary judgement motions?
 13 A I did read the opinion a few weeks ago when it first
 14 came out, but I don't remember all the details now as I sit
 15 here. I didn't read it just yesterday or something like that.
 16 Q Did you believe it was relevant to know what the Court
 17 has already decided in this action before testifying in court?
 18 A Yes, I think it was very informative to me to read the
 19 summary judgement, yes.
 20 Q And you are aware what the Court has already decided in
 21 this case, correct?
 22 A I'm not a legal expert, but I think I have a general
 23 understanding of the ruling.
 24 Q I think you testified in connection with your
 25 qualifications as an expert witness or at some point on direct

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1 that you were deemed an expert and testified at trial in one
 2 other case; is that correct?
 3 A Yes.
 4 Q Was that the People of the State of New York v Exxon?
 5 A Yes.
 6 Q And that trial was in this court, correct?
 7 A Yes, I think so.
 8 Q And it was Justice Ostrager was the judge?
 9 A Yes.
 10 Q Can we pull up that opinion just the first page. Is
 11 this the decision after trial in the one case in which you were
 12 deemed to be or qualified as an expert witness?
 13 A I didn't go. I didn't read it so I don't know. I --
 14 once I gave my testimony, I didn't followup on the case.
 15 Q So you haven't read this opinion?
 16 A No. The opinion, no. I didn't read the opinion.
 17 Q Well, let me show you something. If we could please
 18 turn to page 46.
 19 (Continued on next page)
 20
 21
 22
 23
 24
 25

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1 It is the Government's point that their own
 2 witness, in Exxon, was rejected by Judge Ostrager. I'm
 3 not sure what relevance that has to these proceedings.
 4 MR. WALLACE: Fool me once.
 5 MR. KISE: This demonstrates that
 6 Mr. Wallace loss that case. And this is one of the
 7 reasons why. I'm not sure what relevance that has to
 8 this proceeding. I just move to strike the question
 9 and answer.
 10 MR. SOLOMON: Your Honor, what another
 11 Justice of this Court, has thought about this witness'
 12 testimony and reliability and his views as compared to
 13 the weight of the evidence is highly relevant in this
 14 case.
 15 MR. KISE: That's totally fact dependent.
 16 It's not saying he's not qualified as an expert. It is
 17 not saying he wasn't qualified to render opinion. It's
 18 just based on whatever evidence the government failed
 19 to present in Exxon. That was the interpretation of
 20 his opinion in that context. But, it has no relevance
 21 here. It makes no difference at all.
 22 MR. WALLACE: Your Honor, this was the basis
 23 for his qualification, this was used to bolster his
 24 credentials, part of the basis for why he was used as
 25 an expert. It is rebuttal to those points.

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E.Bartov - Defendant - Cross/Mr.Solomon

1 CROSS EXAMINATION
 2 BY MR. SOLOMON:
 3 Q. "As with Dr. Bartov's testimony about the alleged
 4 materiality of an alleged impairment in 2015 of an
 5 ExxonMobil facility, in Mobile Bay, in the golf of Mexico,
 6 discussed infra, the Court rejects Dr. Bartov's expert
 7 testimony as unpersuasive.
 8 "And, in the case of his testimony about the
 9 mobile facility, finds Dr. Bartov's testimony to be flatly
 10 contradicted by the weight of the evidence."
 11 Before I put this up on the screen, were you aware
 12 of Justice Ostrager's holding in that case with respect to
 13 your testimony?
 14 A. No.
 15 MR. SOLOMON: Nothing further, your Honor.
 16 THE COURT: Will there be any redirect?
 17 MR. SOLOMON: One housekeeping matter. I
 18 want to -- I neglected to -- move PX 03446 into
 19 Evidence. That's the staff accounting bulletin that we
 20 talked about on Friday.
 21 THE COURT: Granted. It is in.
 22 MR. KISE: Your Honor, while we're waiting,
 23 now I am reading the last question and answer, I would
 24 just move to strike the last question and answer as
 25 irrelevant.

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1 THE COURT: It seems to me the simplist
 2 approach here, if it is relevant that he's testified as
 3 to whether he should be deemed an expert again, then
 4 the fact finder's decision in that case is relevant.
 5 People make mistakes. And I will reserve to
 6 the extent if somebody comes up with authority on this
 7 situation where if somebody is deemed an expert
 8 testifies and the testimony is rejected -- it's
 9 probably come up at some point before -- whether that's
 10 relevant or not.
 11 So I will leave it in. But, defendants, if
 12 you come up with something in particular, obviously, I
 13 will consider it.
 14 Okay. Mr. Suarez, you have the honor.
 15 MR. SUAREZ: Thank you, your Honor.
 16 REDIRECT EXAMINATION
 17 BY MR. SUAREZ:
 18 Q. Professor, a moment ago, you told the Government
 19 that the Mazars work paper were not something that you
 20 relied on.
 21 Do you recall?
 22 A. Yes.
 23 Q. How, if at all, were the Mazars work papers
 24 relevant to the opinions you have given in this case?
 25 A. The Mazars work paper, to my opinion -- the

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1 opinion that I render -- are irrelevant.
 2 MR. SUAREZ: We could pull backup
 3 Defendants' Exhibit 1019.
 4 Q. Mr. Solomon showed you this document a second ago?
 5 A. Yes.
 6 Q. What was the affect, if any, on Deutsche Bank's
 7 collateral of President Trump investing over \$160 million
 8 into the Doral property?
 9 A. The collateral become much more valuable.
 10 Q. As a result of the collateral becoming much more
 11 valuable, what, if any, was the affect of that investment on
 12 the risk to the loan or credit facility given by Deutsche
 13 Bank?
 14 A. The risk was, substantially, reduced.
 15 Q. Reduced?
 16 A. Reduced.
 17 Q. Thank you.
 18 MR. SUAREZ: We could pull up Plaintiff's
 19 Exhibit 1609, which we reviewed a couple minutes ago
 20 with the Government, and turn to page 13 of 21.
 21 Q. Do you recall discussing this with Mr. Solomon a
 22 couple minutes ago?
 23 A. Yes.
 24 Q. How is the implementation of estimated current
 25 value, for real estate, which appears at ASC 274 10-55-6 to

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1 be read in reference to the definition -- the implementation
 2 guidance for estimated current value that appears at
 3 academic 274-10-55-1?
 4 A. As I said, if you have a specific provision, the
 5 specific provision trump the general provision. Therefore,
 6 as I say, hypothetical, people can use whatever they want.
 7 But, in realty, I'm not -- I can't believe that any
 8 reasonable expert will rely on 55.1 rather than 55.6. I
 9 can't imagine it will ever happen.
 10 Q. What do you base that opinion on, Professor?
 11 A. I base my opinion on my 40 years of accounting
 12 knowledge and my research and my -- and everything else that
 13 I experience during the last 40 years.
 14 It's really absurd to say that you have a specific
 15 provision, that give you specific guidelines for real
 16 estate, how to apply the estimated current value and you use
 17 general provision that have nothing to do with real estate.
 18 Q. If a student in your class told you that they
 19 wanted to use the general language instead of the applicable
 20 specific language, what would you tell your student?
 21 A. I will tell him this is wrong. We don't do it
 22 this way in accounting. It just get confusion. That's all.
 23 Q. Why, in accounting, would you want to avoid
 24 creating confusion at all?
 25 A. Because as it is, the estimated current value is a

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1 very, very, hard to grasp, definition. Because, as I said,
 2 I think, a couple of days ago, ASC 274 is the stepchild of
 3 the codification.
 4 The definition, particularly, of estimated current
 5 value, is extremely unusual. It doesn't use anywhere in the
 6 codification other than 274. And it doesn't use anywhere in
 7 reality; appraisers don't use it, in economic we don't use
 8 it.
 9 So we don't have to create another level of
 10 confusion by using the wrong guidance. The guidance is part
 11 of the definition. And if you use the wrong guidance, what
 12 do you benefit? You just create more confusion.
 13 So you rather use the specific guidance. You must
 14 use the specific guidance.
 15 MR. SUAREZ: If we could pull up Plaintiff's
 16 Exhibit 3437.
 17 Q. Do you recall having a discussion, about this
 18 document, with Mr. Solomon earlier in his examination?
 19 A. I do.
 20 Q. You wanted to provide context for the use of this
 21 document.
 22 Do you recall that?
 23 A. Yes. So, we use this -- I believe I got the
 24 definition of materiality from this document, just like did
 25 Dr. Lewis which is the defense -- the plaintiff expert.

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1 And, actually, I used this because, I use it as a
 2 rebuttal to Dr. Lewis expert. And, I agreed with Dr. Lewis
 3 that this is the correct source for the definition of
 4 materiality.
 5 So, just like Dr. Lewis used it, and just like
 6 Dr. Lewis did not want to confuse the Court and explained
 7 that this is non-authoritative statement that should be
 8 considered -- the definition should be considered -- as part
 9 of GAAP, didn't want to get into this philosophy, so just
 10 like Dr. Lewis didn't highlight it, I didn't highlight
 11 either.
 12 It is highlighted in SAB Staff Accounting Bulletin
 13 99. In 99, they highlight that this definition is the one
 14 to be used together with the definition of the Supreme Court
 15 for materiality that they explain. It's, in substance,
 16 identical.
 17 The definition, by Supreme Court, on materiality
 18 is, in substance, identical to the definition -- Statement
 19 of Financial Condition number eight. And, in the SAB 99
 20 they use it interchangeably when they explain how to apply
 21 the materiality test.
 22 Q. Now if you see here, this one was amended in
 23 December 2021?
 24 A. Yes.
 25 Q. What was the affect of the December 2021

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1 amendment?
 2 A. Well, as I said, this is not the one, the version
 3 that I used. Because, you have to put yourself in the shoes
 4 of the user. And this was not available to the user in
 5 December 2021.
 6 However, if there is any difference, the
 7 differences are minor. So, in practice, there is no
 8 difference between using this version and the version that
 9 Dr. Lewis and I used.
 10 But I just point out that because every detail
 11 here seem to be important so, I just pointed out that this
 12 is the wrong version to use. And I did not use it. And,
 13 Dr. Lewis did not use it.
 14 Q. Now, if we could pull backup the August affidavit.
 15 And, while we're doing that, Professor, which materiality
 16 test did you employ in your analysis?
 17 A. So, the accounting literature and the SEC says
 18 that they are not going to formulate materiality tests
 19 because, there are so many possibilities to do materiality
 20 tests depending on the circumstances of the case.
 21 In this case, I had a choice between a number of
 22 alternatives. I considered all the alternatives that I
 23 could come up with. And, I decided to pick the alternative
 24 that I thought was most appropriate in this case.
 25 For example, Dr. Lewis use another methodology.

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1 Dr. Lewis compare the numbers from the financial statement
 2 with the numbers provided by the expert from the -- from
 3 plaintiff.
 4 Why? Because according to his report, he was
 5 instructed -- he was instructed, by the plaintiff, to use
 6 these numbers.
 7 This, by itself, should cancel his report.
 8 Because, you never tell an expert what critical assumption
 9 you use in your analysis.
 10 If you call me and tell me "I want you to use this
 11 assumption in your analysis," I tell you, immediately, "I
 12 resign. You should look for another expert."
 13 Now, why is it so critical here? Because, they
 14 instructed him to use the valuation of their own experts.
 15 And based on this assumption, he concluded that the
 16 financial statement are material misstatement.
 17 If the plaintiff would have instructed him to use
 18 the valuation, made by your experts, by Mr. Trump's experts,
 19 then Dr. Lewis will come up to the opposite conclusion that
 20 there is no material the -- the statements are not
 21 materially misstated.
 22 In other words, his conclusion follow, directly,
 23 from the assumption used that was instructed by the
 24 plaintiff to use which is unheard of and make no sense.
 25 Now, if I follow the same methodology, what I

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1 would use, I will use the experts from the defense. And,
 2 using the same methodology, I would arrive at the opposite
 3 conclusion that the financial statement are not materially
 4 misstated.
 5 But, I thought that was wrong way to go because,
 6 this is unfair for -- this would be, totally, unfair for
 7 plaintiff. Why should I pick your -- the defense expert and
 8 not the plaintiff expert?
 9 So, therefore, I said this methodology is
 10 inappropriate in this case. And I have to do totally
 11 another methodology.
 12 I used totally another methodology that doesn't
 13 favor the plaintiff and doesn't favor the defense. But, it
 14 is an objective methodology that follow directly from the
 15 definition of materiality. And, it should be undisputed
 16 that this is valid methodology and the conclusion is,
 17 completely, valid.
 18 MR. WALLACE: Objection, your Honor.
 19 Non-responsive. The question was, "What materiality
 20 test did you have -- did you employ in your analysis?"
 21 THE COURT: Sustained. That wasn't
 22 responsive to the question.
 23 MR. SUAREZ: My next question would have
 24 been why. We could go through it again if it helps the
 25 Government break it up for their purposes.

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1 THE COURT: How do you want to try to
 2 rehabilitate that if you do?
 3 MR. SUAREZ: There would have been a series
 4 of questions. He got ahead of my question.
 5 THE COURT: I still strike the answer
 6 because, it wasn't responsive.
 7 MR. SUAREZ: Okay.
 8 THE WITNESS: I am just trying to save time.
 9 Q. Which method, Professor, did you select in your
 10 materiality analysis?
 11 A. I selected the method that directly analyzed the
 12 information used by DB. Because, in the definition, they
 13 say that the financial statement would be --
 14 Q. Don't give me the "why" yet. We'll ask you the
 15 "why."
 16 A. So I use the methodology that depends on the
 17 analysis used by DB.
 18 Q. Why did you select that methodology over other
 19 methodologies that were, perhaps, available to you?
 20 A. So as I said before. And I'll say it again.
 21 There are many methodology. I consider a few of them.
 22 Definitely, I considered the methodology used by Dr. Lewis.
 23 But Dr. Lewis methodology compares the number in
 24 the financial statement to the valuation produced by
 25 plaintiff expert. This is how he quantify the misstatement.

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1 And based on this number, without doing any
 2 qualitative analysis, he computed. Then, the number is
 3 large. He doesn't tell us how large is large. But, he
 4 computed, in the number, the difference is large.
 5 And based on this, he concluded that the financial
 6 statement are materially misstated. However -- he used this
 7 assumption, this critical assumption, because according to
 8 him he was instructed, by plaintiff, to use this assumption.
 9 Now, the assumptions shape the opinion. You never
 10 take assumption from the client you represent or you testify
 11 for. This is absurd.
 12 So -- how you can say it? If Dr. Lewis had used
 13 the valuation produced by defendant's expert, he would have
 14 concluded that there is no material misstatement.
 15 So I want to be fair to plaintiffs. And I did not
 16 want to pick methodology that favor the defense. So I could
 17 do the same thing as Dr. Lewis but, instead of using the
 18 valuation of the plaintiff experts, I use the valuation of
 19 the defense experts.
 20 And just by doing this, changing one assumption, I
 21 had an opposite conclusion that the statements are not
 22 material misstated.
 23 But, this would not be fair to the plaintiff
 24 because, I am using information that is advantageous to
 25 defense.

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1 So I picked a methodology that is objective. It
 2 doesn't favor the defense and it doesn't favor the plaintiff
 3 and it is follow directly from the definition of
 4 materiality.
 5 Q. Now, if we turn to your affidavit and you see, at
 6 paragraph 17 on page five, it state, "Mr. Trump's SOFCs for
 7 2011 through 2021 were prepared in a personal financial
 8 statement format, in accordance with ASC 274. And the
 9 valuation of the investment properties recognized in those
 10 SOFCs were generally consistent with the notion of estimated
 11 current value."
 12 Do you see that?
 13 A. I do.
 14 Q. What do you mean by "generally consistent"
 15 Professor?
 16 A. So, you know, I want to clarify. I did say that,
 17 in accounting, every word matters. But, not when you write
 18 a report to Courts or not when I communicate with my wife.
 19 What I meant is that every word matters when you read a
 20 financial statement.
 21 I am not producing your financial statement. I am
 22 writing an opinion. So maybe I was not as careful and I
 23 should not use the word "generally."
 24 But, I did not pay attention to this minor thing
 25 that "generally" is not even considered -- not mean defined

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1 in GAAP. I just wanted to deliver the message that they are
 2 consistent.
 3 By "generally" I mean, maybe here and there, there
 4 is a random inadvertent deviation from GAAP. But, if there
 5 is a deviation, the deviation is not material. So that's
 6 what I mean by "generally."
 7 So maybe it was not the best word to use here.
 8 Maybe I should use maybe something like "They are not
 9 materially misstated" -- or whatever. But, this was -- this
 10 was my intention.
 11 MR. WALLACE: Objection, non-responsive
 12 Court.
 13 MR. SUAREZ: How is it nonresponsive? It is
 14 his interpretation.
 15 THE COURT: Overruled.
 16 Q. If we go to paragraph 24, it says, "Mr. Trump's
 17 SOFCs, for 2011 through 2021, did not impact, significantly,
 18 Deutsche Bank's decision to extend loans to defendants or to
 19 set these loan's interest rates."
 20 Do you see that?
 21 A. I do, yes.
 22 Q. What did you mean by the word "significantly" in
 23 this statement?
 24 A. Well, I mean, it didn't make a difference
 25 for -- did not impact, significantly, Deutsche Bank decision

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1 to extend loans. I mean, it didn't change. It didn't
 2 change the decision of Deutsche Bank to extend this loan.
 3 Q. And if we turn to paragraph 25, it says, "Deutsche
 4 Bank's independent, rigorous, and subjective valuation
 5 process -- which involves models employing a multitude of
 6 variables from several data sources, independent appraisals,
 7 and a variety of validity checks -- demonstrates that
 8 Deutsche Bank's reliance on the information in the SOFCs was
 9 marginal in deciding whether to extent the subject loans and
 10 what interest rate to require."
 11 Do you see that?
 12 A. Yes, I do.
 13 Q. What did you mean by the term "marginal?"
 14 A. Again, this is not a financial statement. I am
 15 not using GAAP language. By "marginal" I mean, that it
 16 didn't have any significant affect or any -- it didn't
 17 change. It didn't change the -- it didn't change the
 18 decision whether to extend loans or the interest rate.
 19 Q. And if we pull up Plaintiff's Exhibit 293 --
 20 MR. SUAREZ: And just leave this up here
 21 side by side for a second.
 22 Can we turn Plaintiff's 293 to page six.
 23 Q. And we look at "Club Facilities." At the bottom
 24 it says, "For purposes of our analysis, the 1.3 billion in
 25 reported value has been reduced by fifty percent for

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1 deriving unadjusted value."
 2 Do you see that?
 3 A. I do. Yes, I do see it.
 4 Q. How is that reduction consistent with the analysis
 5 that you laid out in your affidavit?
 6 A. Well, as I said before, you cannot take one
 7 sentence and try to understand it. And the same thing is
 8 when you try to interpret GAAP. You cannot take one
 9 sentence and interpret it in isolation.
 10 In order to interpret this sentence, you have to
 11 consider the entire report; the 20 page or something entire
 12 report.
 13 And if you read the entire report, you understand
 14 that this fifty percent reduction was based on the economic
 15 analysis. It is not an arbitrary number they pick and
 16 therefore, they rely on the financial statement.
 17 There is no reliance here on the financial
 18 statement per se. This is a result of their analysis --
 19 economic analysis -- their experience with other assets of
 20 Mr. Trump and their knowledge of the properties.
 21 And if memory serve, I think that even in some
 22 reports they say, "We pick this 50 percent after
 23 consultation with the or in consultation with the Valuation
 24 Services Group."
 25 So, this is not the first asset that they

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1 A. Again, this is based on economic analysis. And,
 2 in order to believe that this is a arbitrary fifty percent
 3 without considering the economic environment here and the
 4 entire set of assets and the entire analysis that they
 5 perform before -- because remember, this is after they
 6 already performed a significant economic analysis.
 7 In order to believe that this is arbitrary -- the
 8 reduction -- with no economic analysis, you have to believe
 9 that Deutsche Bank is not aware of the guidance in FASB.
 10 They are not aware of the guidance for the Federal Reserve.
 11 They are not aware what every accounting textbook, every
 12 scientific paper, every -- many market participant say again
 13 and again and again, that, you cannot rely on the numbers as
 14 reported in the financial statement. You have to make your
 15 own independent analysis, come up with your own numbers
 16 based on the information in the footnotes and based on the
 17 information in other sources and make decision based on the
 18 independent analysis that you perform.
 19 Dr. Lewis is here in the audience. And I am sure
 20 that when Dr. Lewis teaches financial statement analysis, he
 21 tell his students don't take the numbers by their face
 22 value.
 23 That's what financial statement analysis courses,
 24 in every school -- I have heard many of them -- that's what
 25 we teach the entire semester; how to take the financial

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1 evaluate. Before this, they evaluate many, many -- several
 2 other assets in detail. They understand the relationship.
 3 Because, remember, they use liquidation value.
 4 Mr. Trump use estimated current value. These are completely
 5 different concept.
 6 They did analysis, they figure out that based on
 7 their analysis and based on the significance of this
 8 valuation to them, that fifty percent will be appropriate.
 9 Q. What expertise, Professor, is needed to apply a
 10 fifty percent reduction?
 11 A. That's what I said before. If they just take
 12 arbitrary reduction rate, they don't need -- they don't need
 13 the Valuation Services Group. They don't need the risk
 14 management group. They can higher a high school drop out.
 15 And he can plug these numbers into excel sheet and get the
 16 answer.
 17 This is really, you know -- I cannot even
 18 understand where this argument is coming from or what they
 19 are thinking. I have no idea.
 20 Q. If you look, Professor, on the following page, at
 21 page seven, for partnerships and joint ventures, again it
 22 says, "Due to uncertainty, we have taken a fifty percent
 23 haircut on reported value."
 24 Why is it that they just apply fifty percent
 25 again?

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1 statement, come up with your own valuation and use your own
 2 valuation in your analysis.
 3 Q. Professor --
 4 MR. WALLACE: Objection, your Honor;
 5 foundation, relevance on what professor Lewis teaches.
 6 Move to strike that section.
 7 THE COURT: Overruled.
 8 Q. Professor, if a student of yours turned in this
 9 credit report as their homework and you saw the level of
 10 analysis performed on partnerships and joint ventures and
 11 compared it to the level of analysis done on net cash flow,
 12 for example, what would you tell the student about their
 13 homework on partnerships and joint ventures?
 14 A. The partnership analysis -- partnership and joint
 15 venture analysis was preceded by a detailed analysis of
 16 other assets.
 17 So, you cannot look on this, independently, as if
 18 it is the only asset that they are evaluating -- that DB is
 19 evaluating. You have to read this in the context of the
 20 entire analysis, the entire 20 page analysis.
 21 Q. In the context of performing that analysis, why do
 22 you say that banks don't like to burn money?
 23 A. Well, banks don't want to burn money because, this
 24 is not banks. Every company that is for business -- every
 25 company that is for business trying to be efficient, they

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1 don't want to burn their investor money.
 2 So, if you don't need to do an analysis, because
 3 you already know the outcome and you know what you need
 4 then, you save the money and you do this shortcut.
 5 They know that even if they take a 75 percent
 6 reduction -- whatever it will take -- it will not affect
 7 their analysis. This is immaterial -- this is
 8 inconsequential for them. That's why they did this.
 9 Q. Okay. And, let's take a look now at the analysis
 10 on page six as it relates to 40 Wall.
 11 You see here it says the property has a NOI of
 12 26.2 million?
 13 A. I do.
 14 Q. Okay. And, we had a discussion about how 26.2
 15 million is a marathon.
 16 What does -- excuse me. 26.2 is a marathon not
 17 26.2 million.
 18 What does the fact that they used a NOI that
 19 doesn't appear on the Statement of Financial Condition tell
 20 you about the credit memo?
 21 A. Well, it means that they got this number
 22 elsewhere.
 23 Q. Now, if we pull up Plaintiff's Exhibit 798, at
 24 line --
 25 MR. SUAREZ: Well, let's pull up Plaintiff's

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1 Exhibit 798.
 2 Q. Do you recognize this document?
 3 A. Can you blow it up a little bit?
 4 Sorry. Okay.
 5 Yes, I do remember it. Yes, I review it.
 6 Q. Do you see that it's the supporting data for the
 7 2011 Statement of Financial Condition?
 8 A. Yes.
 9 Q. If we go down to line 112, do you see where it
 10 says, "40 Wall Street?"
 11 A. I do.
 12 Q. Do you see it has an "NOI" there for 40 Wall
 13 Street of 26,234,000?
 14 A. I do.
 15 Q. And, do you see what the basis for reaching that
 16 NOI is right above?
 17 A. Yes.
 18 Q. Do you see that it's an average income for the
 19 five-year period subtracting an average expense for the
 20 five-year period to reach that NOI?
 21 A. I do. This is known as stabilize net operating
 22 income. So, they don't took the number from the statement
 23 whatever -- whatever statement they use. Because, net
 24 operating income is not even GAAP.
 25 Q. Let's take it piece by piece.

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1 What does it mean that the average income minus
 2 the average expenses were subjected from each other to reach
 3 a NOI in connection with this?
 4 A. This mean that this is a calculation. There is no
 5 GAAP here. This is an economic approach that is recommended
 6 by economic theory in order to compute the stabilized NOI;
 7 meaning, the NOI which is expecting to recur in the future.
 8 If you take one year NOI, there is a lot of
 9 randomness in this number. So, what people do, they average
 10 it over a few years.
 11 Statistically, when you average random variables
 12 over a few years, you remove the random error and you get an
 13 estimate -- it's still an estimate. It's still subject to
 14 estimation error. But, statistically, this estimate will be
 15 more accurate than if you take one year of data.
 16 Q. And was that method disclosed on the face of the
 17 supporting data?
 18 A. Yes, right here. Yes, of course. It says average
 19 income for five years, average expenses for five years.
 20 Q. And if you see there, it says 2013 to 2017?
 21 A. Yes.
 22 Q. This was prepared in 2011, correct?
 23 A. Right. So, this is, actually, based on future --
 24 on forecasted numbers. So, when you compute a normalized
 25 NOI, you can compute it based on past data. You can compute

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1 it based on forecasted data.
 2 In this case, it appears from what is given here
 3 that they based stabilized NOI -- so they base their NOI on
 4 predictions what will happen, according to them, in the next
 5 five years. And they take the average -- totally
 6 acceptable. Many companies are doing that. And, it's
 7 totally acceptable.
 8 Q. Why is it done that way?
 9 A. Well, it is done that way because, according to
 10 economic theory, this will give you a good indication of the
 11 value of the asset if you take the NOI and you divide it by
 12 the cap rate.
 13 MR. SUAREZ: And I think I previously
 14 referred to this as Plaintiff's Exhibit 798. Just so
 15 the record is clear, it's Plaintiff's Exhibit 788 in
 16 native format.
 17 Q. How does that NOI, on the supporting data, tie to
 18 the NOI that was reflected in the credit report?
 19 A. Which credit report.
 20 Q. Plaintiff's Exhibit 293 that we just had up?
 21 A. Oh, I thought they used the same number. They
 22 used the same NOI in the one that is reported here.
 23 Q. And what does that tell you about the manner in
 24 which Deutsche Bank used the Statement of Financial
 25 Condition if anything?

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1 A. I think it is appropriate. In appropriate way.
 2 There is no -- there is no -- there is no, no obvious
 3 inflation or distortion of the valuation.
 4 Q. As a matter of fact, if you look at the document
 5 that the Government showed you, Plaintiff's Exhibit 1573,
 6 and we turn to the six million dollar figure that they
 7 wanted you to focus on, in that appraisal --
 8 MR. SUAREZ: Do we have that up?
 9 (Whereupon, the following proceedings were
 10 stenographically recorded Shameeka Harris.)
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Professor Bartov - by Defendant - Redirect (Mr. Suarez) Page 6567

1 THE COURT: Five-minute warning. It is a hard 5
 2 minutes. We got to leave at 12:50.
 3 Q And if we go back to Plaintiff's Exhibit 293 at page 6
 4 and you take a look at the net equity real estate chart there in
 5 the center, do you see a -- for 40 Wall, a DJT valuation of 524
 6 and a DB valuation of 438; do you see that?
 7 A Yes.
 8 Q And then if we turn over to Plaintiff's Exhibit 302, we
 9 can put them next to each other. Do you see this is the 2018
 10 credit report? This is the one you reviewed with Mr. Solomon a
 11 little while ago?
 12 A Yes.
 13 Q And, again, we turn to the analysis of 40 Wall on page
 14 ten?
 15 A Yes.
 16 Q And you take the analysis for 40 Wall and you see the
 17 analysis that was performed there on 40 Wall where it says based
 18 on an SF assumption DBVSG indicated an adjusted value of
 19 541.6 million?
 20 A Yes.
 21 Q What, if anything, would your experience in credit
 22 analysis tell you about the manner in which the value of 40 Wall
 23 changed from 2011 to 2018?
 24 A Say -- what's the question here?
 25 Q What, if anything, in your experience with credit

Professor Bartov - by Defendant - Redirect (Mr. Suarez) Page 6566

1 REDIRECT EXAMINATION
 2 BY MR. SUAREZ:
 3 Q Do you see -- do you recall Mr. Solomon focusing you on
 4 that \$6.2 million number?
 5 A Yes.
 6 Q And I think you tried to make some point about four
 7 times that underlying?
 8 A I rejected his assertion.
 9 Q Do you recall where the top where it says budget CY
 10 2011?
 11 A I do see that, yeah.
 12 Q Now, the budgeted at NOI is one number, correct?
 13 A Yes.
 14 Q And the method that was used for the stabilized NOI
 15 didn't use a budget at NOI, correct?
 16 A That's wrong. It's completely -- you compare apples
 17 and oranges. It's completely two different things.
 18 Q What's the effect of comparing two numbers that you
 19 described as apples and oranges?
 20 A The comparison is meaningless.
 21 Q Why is that?
 22 A Because when you compare numbers, it is based on
 23 five-year projections and you take the advantage. You compare
 24 numbers for one year, obviously, there would be vastly
 25 different.

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1 analysis would it tell you about the manner in which Deutsche
 2 Bank's own analysis of the value of 40 Wall changed from period
 3 over period?
 4 A The analysis always change because it's based on
 5 assumption. The assumption change over time and in economics
 6 the reality change all the time and valuation will change all
 7 the time also.
 8 Q And if we go back to Plaintiff's Exhibit 118 and turn
 9 to page eight of this document, do you see this again as an
 10 appraisal of 40 Wall?
 11 A Yes.
 12 Q As of June 1, 2015?
 13 A Yes.
 14 Q And the appraisal at page ten reflects a market value
 15 as is of \$540 million?
 16 A Yes.
 17 Q What is the fact that there are three different values
 18 over a period of time forward if you consider the \$200 million
 19 appraisal that Mr. Solomon showed you tell about the valuation
 20 of this asset?
 21 A Well, as I discussed on Thursday, the valuation quickly
 22 ingest, first of all, on the finishing of values. Appraisers
 23 use completely different definitions appraisers. If you read
 24 Mr. Hirsh and Mr. Korologos' report, they have no clue what
 25 estimated market value is. They have no clue. So appraisers

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1 use different definition of value than estimated current value.
 2 So there is no surprise that appraisers would come up with
 3 completely different valuation than the estimated current value.
 4 There is no contradiction here. It is just expected differences
 5 between different values that will derive based on different
 6 definitions and they will derive by different people. That's
 7 totally expected.
 8 Q And if you look at this appraisal from 2015 and if I
 9 could specifically draw your attention to page 15 of the
 10 appraisal, which reports a net operating income of \$23,203,919;
 11 do you see that?
 12 A I do.
 13 Q How does that compare to the estimate that was used in
 14 2011 on a forward looking basis?
 15 A Very close. Every estimate is subject to estimation
 16 error but this is extremely close to the -- to the realization.
 17 Q And what does that tell you about the method used in
 18 2011 to determine the estimated current value of 40 Wall in the
 19 statement of financial condition?
 20 A So scientists don't assess the integrity or the quality
 21 of a focus in hindsight based on the realization. We don't do
 22 it this way because even if this number was vastly different
 23 than the -- than the predicted number, then the focus is still
 24 no evidence of any fraud or any inflation. It just says that
 25 the estimation error was lodged because of unforeseen events

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1 that happened between the time the focus was made and the
 2 realization. But the fact that this is very close, the fact
 3 that this is very close is totally inconsistent with assertion
 4 that the focus was inflated or distorted.
 5 THE COURT: Okay. See you all at 2:15. And,
 6 witness, you're tired of hearing me say this, you can't
 7 discuss the case or your testimony with anybody.
 8 (Whereupon, the witness was excused from the
 9 stand.)
 10 (Whereupon a luncheon recess was taken.)
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Professor Bartov - by Defendant - Redirect (Mr. Suarez) Page 6571

1 COURT OFFICER: All rise, Part 37 is back in
 2 session, the Honorable Arthur Engoron presiding. Please be
 3 seated and come to order.
 4 THE COURT: Okay, let's continue with the redirect.
 5 (Whereupon, the witness resumes the witness stand.)
 6 THE COURT: Welcome back, Professor. I will remind
 7 you you are still under oath as you know, okay.
 8 Mr. Suarez, please continue.
 9 MR. SUAREZ: Thank you, Your Honor.
 10 CONT'D REDIRECT EXAMINATION
 11 BY MR. SUAREZ:
 12 Q Professor, earlier today in discussion you had with
 13 Mr. Solomon in form or substance, you discussed that when you
 14 find enough evidence to support your analysis for an opinion you
 15 stop looking; do you remember that testimony generally?
 16 A Yes.
 17 Q What did you mean by that?
 18 A Well, you know, in -- it's when you do an audit, when
 19 an accountant does an audit, they have an audit plan and it's
 20 impossible to examine all documents because the documents are
 21 millions of documents. So what they do, they take a small
 22 sample of documents. And if they don't find any suspicious
 23 evidence, they would stop. If they find suspicious evidence,
 24 then they will -- they will increase the investigation. So in
 25 this sense what I meant is I made a plan for myself what

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1 documents I need to review. I reviewed the documents as I
 2 thought the most important, the least important, and I concluded
 3 that I have sufficient evidence and there is no suspicion, there
 4 is no suspicious evidence that will require me to increase my --
 5 my investigation of the documents so that's when I stop. If I
 6 found suspicious documents, I will expand the investigation.
 7 Q And how, if at all, is that consistent with a manner in
 8 which you conduct your academic research?
 9 A Well, academic research is -- is somewhat different
 10 because my academic research is typically based on computerized
 11 databases. So the computer analyze all the data. So the data
 12 analysis course is very small. But even in academia when we
 13 hand collect data, we do the same thing. We take a sample and
 14 we do the analysis based on the sample. We are not going to
 15 collect data from the entire population because this is
 16 prohibitedly (sic) costly. If I was using every single
 17 available data in this case, I will still be reading documents.
 18 I will never have time to write a report.
 19 Q And how is that consistent with the manner in which
 20 Deutsche Bank conducts credit analysis if at all?
 21 A Well, from the -- from the credit reports, you see that
 22 they actually adopted the same strategy. They started with
 23 major assets that are most important to them and they analyzed
 24 them in detail. And once they got sufficient confidence that
 25 the financial health of the Trump Organization that it is

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1 satisfactory, then they move to a different type of analysis
 2 where it was based less on -- on data analysis and more of a
 3 more general approach.
 4 Q And if we can pull up Plaintiff's Exhibit 293, and I
 5 could turn your attention to page four of this document. Do you
 6 see where it says key ratios? Do you see where it says
 7 unsecured lending guidelines?
 8 A Yes.
 9 Q And, again, if you take a look at page eight, key
 10 ratios, it says, "to demonstrate the strength of the guarantor,
 11 we have applied the unsecured lending guidelines." Do you see
 12 that?
 13 A I do.
 14 Q Now, I'd like to show you Defendants' Exhibit 193 which
 15 are the unsecured lending guidelines and turn your attention to
 16 page eight of the unsecured lending guidelines where it says,
 17 "based on their evaluation of specific concentrated assets,
 18 lending officers use their judgment in setting the appropriate
 19 adjustments to achieve conservative valuations of concentrated
 20 assets."
 21 How, if at all, is that consistent with the manner in
 22 which Deutsche Bank performed credit analysis, the credit
 23 analysis reflected in the memos?
 24 A Yeah, this is exactly what they did. They perform
 25 independent analysis based on their judgment and assumption.

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1 They didn't choose Mr. Trump's assumptions.
 2 Q And if we turn to Defendants' Exhibit 193 at page nine,
 3 do you see where it says, "commercial real estate direct private
 4 equity and art"?
 5 A Yes, I do.
 6 Q And it says to be determined case-by-case based on an
 7 appropriate valuation formula or acceptable appraisal?
 8 A I see.
 9 Q Is that consistent with your evaluation of the credit
 10 analysis performed by the banks and the credit memos?
 11 A That is exactly what I said before. They do their own
 12 analysis and they decide on case-by-case how to deal with it.
 13 Q And with respect to the discussions you've had here
 14 today and the questions from Mr. Solomon, how, at all, has your
 15 opinion changed as to whether the statements contained any
 16 material misstatements if at all?
 17 A My opinion doesn't change because I assume and I treat
 18 it, the credit reports, and under this assumption that they use
 19 their judgment and they make asset-by-asset valuation.
 20 MR. SUAREZ: Your Honor, may I confer with my
 21 colleagues for a second?
 22 THE COURT: Of course.
 23 Q Professor, at the conclusion of your discussion with
 24 Mr. Solomon, they brought us back to the Exxon case that the New
 25 York Attorney General filed here in the Sate Supreme Court of

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1 New York; do you recall that testimony?
 2 A Yes.
 3 Q And they read out certain passages of the Court's order
 4 in that case that they referred to; do you recall that?
 5 A I do.
 6 Q And are you aware in the plaintiff's posttrial
 7 memorandum whether the New York Attorney General's office cited
 8 to your expert testimony almost a dozen times in support of the
 9 positions that they took in that case?
 10 A I was not aware of it.
 11 Q And have you --
 12 MR. WALLACE: Objection, Your Honor. I would say
 13 relevance.
 14 THE COURT: Overruled.
 15 Q And if you turn to the last page of the plaintiff's
 16 posttrial memorandum, do you see under the Honorable Letitia
 17 James Attorney General of the State of New York whose signature
 18 that is on the posttrial brief?
 19 A I see that.
 20 Q Whose signature is that?
 21 A It says Kevin Wallace.
 22 MR. SUAREZ: No further questions, Your Honor.
 23 THE COURT: Would there be any recross?
 24 MR. SOLOMON: No, Your Honor.
 25 THE COURT: Oh, okay. Assuming nobody else has any

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1 questions for the witness, the witness is excused. Thank
 2 you.
 3 (Whereupon, the witness was excused from the
 4 stand.)
 5 MR. KISE: Judge, we have a couple of followup
 6 housekeeping items.
 7 THE COURT: Okay.
 8 MR. KISE: Ms. Hernandez, will probably go through
 9 these far better than me, but they relate to things that
 10 happened during the course of the defense case with respect
 11 to Mr. Shubin, Professor Bartov. Remember we wee going to
 12 introduce, for record purposes, copies of their reports that
 13 the Court didn't allow. And I believe there were some
 14 documents associated with Patrick Birney's testimony that we
 15 are trying to do by agreement with the Attorney General so
 16 that it will save us all the time associated with having
 17 Mr. Birney go through those documents.
 18 I believe that happened a couple of weeks or so ago
 19 when Mr. Birney was on the stand, but I will let Miss
 20 Hernandez touch on those three issues.
 21 MS. HERNANDEZ: Hi, Your Honor. We would like to
 22 move into evidence D1079 which is Shubin's report just for
 23 appellate purposes as we discussed.
 24 MR. WALLACE: For appellate purposes, no objection.
 25 THE COURT: No objection. It's in.

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1 MS. HERNANDEZ: And the same thing for D1073 which
 2 is Mr. Bartov's supplemental report disclosure.
 3 MR. WALLACE: Again, for appellate purposes, no
 4 objection.
 5 THE COURT: It's in.
 6 MS. HERNANDEZ: Then exhibits D1074, D1075, D1076
 7 and D1078 which are the exhibits referenced in Mr. Bartov's
 8 supplemental disclosure. Those are the Brace Wall Reports
 9 that he references in the supplemental disclosure.
 10 MR. WALLACE: Objection. Those are in the record,
 11 those are the reports to the monitor.
 12 THE COURT: They are in the record?
 13 MR. WALLACE: They are already in. There is no
 14 need to put them in. It's like exhibits as to Mr. Bartov's
 15 affidavit or letters.
 16 MR. KISE: They are just referencing Bartov's
 17 letter. I guess they are on the NYSCEF so they would be
 18 available. If they are part of the record anyway, then we
 19 don't need to double it up. It is just for appellate
 20 purposes in any event so, yes.
 21 THE COURT: You are going to appeal?
 22 MR. KISE: I don't know. This will be number 7 or
 23 8 in one case so probably.
 24 THE COURT: All right. We all agree that those
 25 four documents are in evidence.

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1 MR. WALLACE: They already in the record. We
 2 object to adding those as separate exhibits.
 3 MR. AMER: These are Judge Jones' letters that were
 4 filed on NYSCEF.
 5 MR. KISE: As long as they are part of the trial
 6 record because some of that predates the trial. Some of the
 7 letters predate the trial. Most all of them predate the
 8 trial. So we are just including it. They're referenced in
 9 Professor Bartov's supplemental report so it is just all
 10 part of the same package.
 11 MR. WALLACE: I believe everything on NYSCEF is
 12 part of the record. We'll waive our objection to the four
 13 addition documents being repeated in the record.
 14 THE COURT: Okay.
 15 MR. WALLACE: For appellate purposes.
 16 MS. HERNANDEZ: And then one more thing that
 17 Mr. Kise didn't mention is we would like to move in the
 18 clips that we used with Mr. Bender on October 4th and
 19 October 5th so that's D1062 into evidence.
 20 THE COURT: In the clips?
 21 MS. HERNANDEZ: It is the clip report for the
 22 videos that were played on October 4th and --
 23 MR. ROBERT: I think they did the same thing where
 24 they put the clips in for the purpose of the audios that
 25 they had played as well.

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1 MR. WALLACE: I will accept the defendants'
 2 representation that this report reflects the clips that were
 3 actually played, but if that's the case, then we have no
 4 objection.
 5 THE COURT: Okay. Then --
 6 MS. HERNANDEZ: Then the last --
 7 THE COURT: They're in.
 8 MS. HERNANDEZ: Thank you, Your Honor. The last
 9 housekeeping is we would like to move in the backup Mazars
 10 documents that were sent to Mazars as we discussed during
 11 Mr. Birney's testimony. It is a lengthy list of documents
 12 so I'll go through them and then we'll see if plaintiff has
 13 an objection.
 14 MR. WALLACE: We do. I believe this is the list of
 15 182 documents that we got at 9:30 something last night.
 16 That's not the few documents that they were going to
 17 potentially enter with Mr. Birney. 182 documents would
 18 represent a significant fraction of the entire record in
 19 this case and does not strike us as appropriate that those
 20 just come in. Certainly, we have not had any chance to go
 21 through the list of all those documents to figure to out
 22 which ones are in there, but it doesn't strike as
 23 appropriate that exhibits on that volume.
 24 THE COURT: So what if I deny the request without
 25 prejudice? Well, I mean, you don't know what 182 are,

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1 right? So, maybe, you won't object to some or all of them.
 2 MS. HERNANDEZ: All of these documents were Mazars
 3 Bates labeled and on plaintiff's exhibit list.
 4 MR. AMER: They're not calling a witness to get
 5 these documents in.
 6 MR. KISE: That was the whole point. It was going
 7 to save us the trouble of having Mr. Birney come here and go
 8 through one by one by one. As the Court may recall,
 9 Mr. Birney answer questions fairly slowly. So, we weren't
 10 going to go through those, but we're happy to give them more
 11 time to look at them. I don't know about the timing. That
 12 was the purpose of the colloquy when Mr. Birney was here, as
 13 I recall, is that we are going to -- we can bring him to get
 14 them in.
 15 MR. AMER: The purpose was to share with us a list
 16 of the handful of documents that they were otherwise going
 17 to get through Mr. Birney and, you know, we got it last
 18 night at 9:30. I think the bigger point is it's not
 19 appropriate to try and get in over a 180 documents without
 20 having a witness on the stand or even to put us to the
 21 burden of having to review those documents when we should
 22 be -- you know, they should be resting right now and we
 23 should be moving on to our rebuttal case, then we have a
 24 posttrial brief.
 25 MR. KISE: So, Your Honor, two things. One, this

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1 was pursuant to the discussion that took place. We can go
 2 back to the discussions that took place on the record with
 3 regard to Mr. Birney. I don't know that anyone used the
 4 term handful of documents, but we can certainly look at the
 5 record, one.
 6 Two, all of these documents are on plaintiff's
 7 exhibit list. So there's -- they clearly reviewed them and
 8 understand what they are fully. Whether they decided to use
 9 them or not it's another matter. It is not like they're new
 10 documents. And we can get Mr. Birney down here, if we need
 11 to, to go through that exercise, but I would suggest that we
 12 would start that at roughly 3 o'clock or 3:15 and then it
 13 would take the balance of day tomorrow to go through
 14 document by document. If they're prepared to do what Your
 15 Honor suggest, which is let them look at the documents, you
 16 know, and --
 17 THE COURT: Decide whether they want to --
 18 MR. KISE: Decide later. If we need to call
 19 Mr. Birney and bring him in, then we'll be prepared to do
 20 that but --
 21 MR. AMER: Can I point out we had a day off
 22 yesterday. Why is this coming up now. If they were serious
 23 about putting in over 180 documents, then why didn't we get
 24 Mr. Birney on the stand yesterday and go through this
 25 exercise. This is really unfair to the Court and to us and

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1 it's totally inappropriate. And just because a document is
 2 a plaintiff's exhibit, doesn't mean they get to put it in
 3 without having a witness on the stand. We can put in
 4 documents that are party admissions against interest without
 5 necessarily having the author of the document on the witness
 6 stand. But if it's their document, they don't get to do
 7 that because it's hearsay for them.
 8 So, it is just totally inappropriate to, you know,
 9 minutes before you rest your case to say, oh, by the way, I
 10 have a 180 some odd documents I want to put into evidence.
 11 It is not the way that they should approach this at all.
 12 THE COURT: I mean, just as a general matter of how
 13 cases are -- how trials are conducted, plaintiff's points
 14 are very valid unless the defendants can point to, you know,
 15 some earlier agreement. Apparently, according to the person
 16 that sits alongside me, where a handful was used, 182 is an
 17 awful lot of documents.
 18 MR. KISE: We can go back and look at the
 19 transcript. There was an agreement and an understanding
 20 that we would take Mr. Birney off the stand and we would
 21 avoid having to go through document by document by document.
 22 And, frankly, we never anticipated -- it's not really -- it
 23 is the substance of the document not the number. I mean, we
 24 never anticipated there was any controversy. It was on
 25 their exhibit list. They are just backup documentation

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1 relative to the SOFC's that we could just have Mr. Birney
 2 walk through in exhaustive detail, and we're happy to do
 3 that but that was the prior understanding as we were going
 4 to do it.
 5 We didn't hear anything from them this morning. I
 6 mean, back to timing and I'm not blaming them, but we sent
 7 it last night. First thing this morning, if there was a
 8 problem, someone could have told us that there was a
 9 problem. No one said there was a problem. I didn't think
 10 there would be a problem with these documents in looking at
 11 them. I'll let Miss Hernandez speak to the specifics of
 12 them.
 13 THE COURT: What are they basically? You keep
 14 talking about them. Let's get to the 180 pound elephant in
 15 the room.
 16 MS. HERNANDEZ: Your Honor, as you may recall, when
 17 Mr. Birney was testifying we walked him through the various
 18 backup data that Mazars sent -- excuse me, that The Trump
 19 Organization sent to Mazars that had of these figures that
 20 were used in the supporting data. So this is just that
 21 backup documentation. It was produced by Mazars, and it's
 22 all on plaintiff's exhibit list. I would assume it would be
 23 noncontroversial, but I understand if plaintiff wants
 24 additional time to look at them.
 25 MR. WALLACE: We don't want additional time. We

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1 want the case to end.
 2 MS. HERNANDEZ: Me too.
 3 MR. WALLACE: On November 29th, colloquy with
 4 Mr. Robert was, I think the deal that we made, I'll
 5 let Mr. Wallace confirm it, is that we will, later tonight,
 6 Miss Hernandez will send a list of documents that we believe
 7 constitute the backup that this witness would have
 8 authenticated and put into evidence. The Attorney General
 9 then review it. If they have anything else they want to
 10 add, there may be some discussion. So we may have to bring
 11 Mr. Birney back for that limited purpose. We are hoping
 12 not to.
 13 If someone had 182 documents sitting in this
 14 courtroom ready to have Mr. Birney authenticate on
 15 November 29th, there was no reason to wait until last night
 16 at 9:30 p.m. to send them to us and ask for us to agree to
 17 them. I think the witnesses -- the defendants, they do not
 18 have a witness, should be resting. It shouldn't be, well,
 19 we can call Mr. Birney back tomorrow. I don't know where
 20 the 182 came from.
 21 It strikes me that it would appear they spent the
 22 last two weeks finding additional documents they would like
 23 to get in using this agreement we had two weeks ago and it's
 24 just not appropriate at this point to just dump these
 25 documents on us, to dump them into the record and to dump

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1 them on the Court. So we object to this process in its
 2 entirety. If the defendants don't have a witness ready to
 3 go right now, they should be resting.
 4 MR. KISE: So, Your Honor, might I ask the Court's
 5 indulgence because even the number 182 to me seems like a
 6 high number. Can we have ten minutes and I can figure out
 7 why the number is so high and that may solve the problem
 8 itself. I'm not sure why we have 182, that number, that
 9 number does seem high because I wouldn't think -- maybe,
 10 it's something to do how they're structured, that we can
 11 explain to the court. But I don't want to make any
 12 representations as to why that number is high or low or
 13 perhaps it can be substantially compressed without --
 14 without having just a few minutes to review the situation
 15 and understand.
 16 THE COURT: Maybe, it's one booklet with 182 pages.
 17 See what you can do. I still think the fair thing to do
 18 here is that I would deny it without prejudice send them a
 19 list of the documents and you can have as long as you want.
 20 We're just trying to get them in the record. I mean,
 21 it's -- just almost a theoretical construct. Okay, they
 22 were listed on an exhibit, are they in the record, so what.
 23 Why don't you can see why there are so many. I'll be in the
 24 back briefly.
 25 (Whereupon, there was a pause in the proceedings.)

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1 THE COURT: We're back on the record. What
 2 did you discover?
 3 MR. KISE: Yes, your Honor. So, apparently,
 4 the number is what it is just because of the way they
 5 were broken out. I can show the Court, if you will
 6 allow me to hand this up, an example.
 7 THE COURT: Do you have another copy so
 8 plaintiff can see it?
 9 MR. KISE: It's on their exhibit list. It
 10 is Plaintiff's Exhibit 701. The point is, Judge, as
 11 you can see, its just comparable backup data. It's all
 12 routine matter that, really, shouldn't be controversial
 13 at all. It's just what Patrick Birney would testify,
 14 "Yes, this is on 40 Wall Street. We sent him this
 15 piece of paper." It is not there for the truth of the
 16 matter asserted.
 17 One thing we could do is just simply submit
 18 an affidavit, from Mr. Birney, that says, "Yes, this is
 19 all the backup." And that would solve the problem
 20 completely without having to call him as a witness.
 21 But, this is it. It's just the documents
 22 that we sent to -- that we, the defendants' sent,
 23 Mr. Birney to Mazars. And we would never have
 24 anticipated there would be any controversy over such a
 25 ministerial document. Frankly, there shouldn't be.

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1 If your Honor wants to deny without
 2 prejudice, we could simply save us all a lot of -- we
 3 can submit an affidavit, by tonight, that they're
 4 business records.
 5 And he can ask the witness without saving the
 6 Court the time of calling someone here to just
 7 walk-through all of that routine matter, there's
 8 nothing particularly controversial in there. They are
 9 not being offered for the truth of the matter asserted.
 10 THE COURT: Plaintiff, do you agree they're
 11 not being introduced to prove the matter asserted
 12 therein?
 13 MR. WALLACE: I am not, entirely, clear
 14 because, I don't have a witness saying for what purpose
 15 they're being put in for.
 16 These are also the versions that were
 17 contained within the Mazars file so, likely contain,
 18 oftentimes, notations from Mazars other work.
 19 I would think if we were presenting these,
 20 through Mr. Birney, and he were to say, "This is what I
 21 gave to Mazars," there would be questions about "Is
 22 there information that wasn't sent to Mr. Mazars about,
 23 say, I don't know an appraisal."
 24 The fact that they're just noncontroversial,
 25 I don't know. I haven't looked at all 182. So, I

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1 can't agree with that representation.
 2 THE COURT: Here's what I'm going to do.
 3 Basically, what I said. First of all, it sounds like
 4 these documents could be relevant. So, this case is
 5 about this sort of document.
 6 The 182 -- the infamous 182 -- should have
 7 been sent two weeks ago. I don't know who didn't send
 8 them two weeks ago. But, you know, it is throwing a
 9 monkey wrench in things here.
 10 But, I will deny, without prejudice, to
 11 defendants. How long will you need to send these
 12 now -- you already sent them. It is already done.
 13 MR. KISE: We have sent them.
 14 THE COURT: All right. So plaintiff, I hope
 15 you'll agree to admit as many as you can. But, that's
 16 up to you. How long will you need to decide. There's
 17 no hurry.
 18 MR. WALLACE: I think Tuesday -- I think
 19 until Monday. And, the only qualification I'll say, is
 20 the process we planned was that we would, potentially,
 21 offer our own responsive documents to put some of these
 22 in context. That's why I think it might require a
 23 little extra time for us to look at them.
 24 THE COURT: Okay. So, until Monday. And
 25 you can offer documents that you would like the

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1 defendants to agree to admit into evidence, right?
 2 MR. WALLACE: Subject to defendants resting
 3 their case with this issue left open the way we left
 4 open the issue with Mr. Weisselberg.
 5 And, I will note there that, again, we were
 6 promised documents. We still have not gotten anything
 7 from the defendants of the production items they were
 8 going to produce and we've proceeded with the trial
 9 anyway. So, I think they should still be resting their
 10 case with this item open.
 11 THE COURT: Mr. Kise, do you know what
 12 document he's referring to?
 13 MR. KISE: I do.
 14 THE COURT: You don't?
 15 MR. KISE: I do.
 16 THE COURT: It sounded like you said, "I do"
 17 and you went like this.
 18 MR. KISE: I was shaking my head that "Here
 19 we go." We're all getting in the same place I think.
 20 And, I understand their view as well, like, we're
 21 trying to get this over all of us.
 22 In all events, we'll get them -- we send them
 23 the documents. Your Honor, if they would like an
 24 affidavit with respect to our documents, we can do that
 25 so that they can have them to judge that -- if that

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1 matters to them. I'm happy to provide it so that, at
 2 least, it is authenticated in the record appropriately.
 3 I don't know that, that matters.
 4 MR. WALLACE: The records are authenticated
 5 because, they are produced in discovery. They are not
 6 Trump Organization documents. So I don't think
 7 Mr. Birney would authenticate the versions of the
 8 documents that were in Mazars files. The question is
 9 of which they are coming in and so on.
 10 So we will take them. We will try to get
 11 through them as quickly as possible so this does not
 12 linger the trial. And, if there are other documents or
 13 other evidence we think needs to come in to
 14 contextualize it, we'll let the Court know.
 15 If for some reason we agree that the
 16 defendants need to put in some kind of affidavit, we'll
 17 let you know. But we'll endeavor to get through this
 18 as quickly as possible.
 19 THE COURT: When will the Weisselberg
 20 documents be produced?
 21 MR. KISE: I have to discuss that with them.
 22 Because I don't know where we were in that process. I
 23 have not looked at that process in a while. It did
 24 not -- since we weren't calling Mr. Weisselberg and
 25 there didn't appear to be any reason to bother with it.

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1 We've been busy with other things frankly.
 2 THE COURT: I can understand being busy with
 3 other things. But, you represented you would turn them
 4 over. Roughly --
 5 MR. KISE: I don't know that we did that.
 6 But, we represented we would search -- I don't know
 7 that there is anything on the record where we
 8 represented any agreement -- any ultimate agreement on
 9 that.
 10 MR. WALLACE: Maybe I should be chasten for
 11 doing this. This is what we did at a front bar. We
 12 exchanged e-mails with the defendants.
 13 I'm happy to send -- to revive it from where
 14 it was the last time we heard from defendants. I will
 15 copy the Court on it so that you are aware of where the
 16 process is as well. We will move ahead.
 17 It didn't prohibit us from resting our case
 18 and chief. I don't think this prohibits the defendants
 19 from resting their case and chief.
 20 MR. KISE: Your Honor may recall the whole
 21 concept was designed to avoid a very lengthy and
 22 protracted discovery battle in the mist of a trial.
 23 And, we thought we could come to some accommodation.
 24 I'm not sure we can or not.
 25 But, at this point, I'm not even sure what

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1 purpose they serve. But at all events, we'll try and
 2 work it out.
 3 THE COURT: Okay.
 4 MR. KISE: That's all we can do.
 5 THE COURT: Defendants, do you rest at this
 6 point?
 7 MR. KISE: Yes, your Honor. Subject to the
 8 one issue that you left open, we do rest. Also, at
 9 this time, we are moving for directed verdict and
 10 asking for the termination of the case.
 11 Rather than take the Court's time this
 12 afternoon, we'll submit something by Friday -- if
 13 that's okay. But whatever timeline you want -- with
 14 respect to the directed verdict.
 15 But, rather than take the Court's time today
 16 with any oral presentation, we'll just submit our
 17 presentation then seeking, on the same basis we have
 18 before, that, now at the conclusion of the defense
 19 case, there is no evidence, no fraud, no victim, no
 20 damage. There is no -- they haven't satisfied the
 21 elements.
 22 And the existence of the rebuttal witness,
 23 Professor Lewis, indicates, fully, that they have a
 24 hole in their case that they're trying to now backfill.
 25 And you've heard our arguments on that.

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1 But, that would be the -- yeah, we'll submit
 2 something, in writing to the Court, Friday morning.
 3 THE COURT: I have a general policy of
 4 anybody wants to write me, send me something, go ahead
 5 and do it. There's no way I'm going to grant that.
 6 But if you want to send something, send it. Plaintiff,
 7 do you strongly object to my allowing that?
 8 MR. WALLACE: I think I object on a logical
 9 basis. There was another motion, for directed verdict,
 10 from Ms. Habba, three days ago, that was denied.
 11 By Friday, we'll have certainly rested our
 12 rebuttal case. The case will be over. We're already
 13 scheduled for briefing and arguments.
 14 So, adding satellite briefing, strikes us as
 15 unnecessary and not necessary -- relevant. And quite
 16 frankly, a waste of Court resources.
 17 Maybe Mr. Amer has additional points.
 18 MR. AMER: I would say if you're going to
 19 entertain a written motion from defendants --
 20 THE COURT: It is more like I'll accept it.
 21 It doesn't mean I will entertain it.
 22 MR. KISE: I think you already said it.
 23 THE COURT: I will disregard it or ignore
 24 it.
 25 MR. AMER: I would like to know if you need

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1 or do not need a written response from plaintiffs.
 2 Because, my preference would be not to bother
 3 responding if the Court is going to do what it's been
 4 doing, which is denying them as they are admitted.
 5 THE COURT: You know, for one thing, it
 6 seems to me motion for directive verdict that's denied
 7 at the end of the plaintiff's case is -- that's almost
 8 never going to be granted during the defendant's case.
 9 Either the plaintiffs made out a prima facie
 10 case or they didn't. I think they did. That's what
 11 I've already ruled. So, you'd be wasting your time.
 12 But I'm not going to tell you not to send me something.
 13 MR. KISE: Your Honor, two things. My last
 14 recollection of the presentation that we did before we
 15 began our evidence, we moved for directed verdict at
 16 the close of their case.
 17 My last recollection, unless you are now
 18 saying that you are denying it, was that you took it
 19 under advisement. That's the last thing I recall you
 20 saying on that.
 21 THE COURT: True.
 22 MR. KISE: For record purposes, it is now
 23 the close of our case, and we need to move for directed
 24 verdict.
 25 Frankly we will -- and, this is why I

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1 suggested Friday for our submission to streamline this
 2 process. Frankly, once they are done with their
 3 rebuttal case, we'll need again, for record purposes,
 4 to make the motion for directed verdict so we could
 5 submit one brief to the Court or one submission -- it's
 6 really not a brief, one submission to the Court, in
 7 lieu of doing what is normally done, which is we
 8 present it live on the record. But in order to save
 9 the Court that time, we're just going to do it the way
 10 I suggested if that's acceptable to the Court.
 11 MR. ROBERT: So the record is clear, that's
 12 on behalf of all defendants, your Honor. Thank you.
 13 THE COURT: How about we do this. You know,
 14 I like to discuss things in a reasonable manner.
 15 So Mr. Kise -- all defendants I should say
 16 Mr. Robert, Ms. Habba et cetera, move for a directed
 17 verdict. It doesn't have to be formal. Send whatever
 18 you want. You can move orally so, why not be informal
 19 in writing?
 20 And I'll give the AG a couple of business
 21 days to decide whether they need to respond. And then,
 22 if they say no, it's no. If you say yes, I will give
 23 you what time you need.
 24 Yes?
 25 MR. WALLACE: This is a colossal waste of

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1 resources if people are going to be writing, briefing
 2 the same thing we're about to be briefing in less than
 3 a month.
 4 I would ask that -- the defendants have
 5 indicated they're moving for a directed verdict. If
 6 your Honor is not going to grant the directive verdict,
 7 we just ask that it be denied.
 8 This is -- we already had a 45 page
 9 power-point presentation on directed verdict from
 10 Mr. Kise. I've never seen -- that's highly irregular
 11 if we're going to talk about things that we've seen.
 12 The defendants are not entitled to infinite
 13 directive verdict motions every time they think there
 14 is a good piece of evidence or they don't like
 15 something. This is silly. And I don't know what
 16 record Mr. Kise is claiming he needs to keep. They
 17 have made multiple motions for directed verdict. None
 18 have been granted.
 19 We've all been here for weeks. I think we
 20 know -- we've already won on summary judgment. I don't
 21 even know what we're pretending is happening here.
 22 But, for us to be now doing letter briefing
 23 on the same subjects that are about to be the subject
 24 of posttrial briefing, strikes me as the height of
 25 waste of resources.

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1 This is -- he's going to have his chance to
 2 make all these arguments as of January 5 and appear
 3 before your Honor on January 11 and get a decision on
 4 the law. You don't need to have an additional set of
 5 letter briefing.
 6 I don't think there is any world in which
 7 we'll respond to this. And if we're talking two extra
 8 days, I guess we're talking to Tuesday of next week.
 9 If you want to allow him to send it in, that's fine.
 10 But, this strikes us as a colossal waste of resources
 11 and time.
 12 THE COURT: To me, it is somewhat analogous
 13 to a prior restraint. You can ask me for something.
 14 No, ask me what you want. Plaintiff, you can decide
 15 whether you need to respond to it or not. I think you
 16 have a lot to go by at this point since I have denied
 17 it, at least, five times or so.
 18 So, by Friday, send me whatever you want.
 19 I'm not promising to read it even. I probably will.
 20 But, you know, I don't want to tell you not to ask me
 21 to do something. So that's it.
 22 Two business days later, plaintiff you will
 23 let me know if you need to respond. And, I hope you
 24 will only need two or three days after that.
 25 Fair enough?

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1 MR. WALLACE: Yeah, I mean, we're getting
 2 close to -- taking your position that you're not going
 3 to preclude him from sending things in. Understood,
 4 your Honor. We appreciate the time that you have
 5 granted us.
 6 THE COURT: Okay. I get letters all the
 7 time from people that didn't ask for permission. This
 8 is just another one of those but, in a big case.
 9 So that's solved. Now, we have a witness
 10 Professor Lewis -- Mr. Lewis. I believe that was --
 11 there was another letter over lunchtime.
 12 MR. KISE: There is. Are they calling
 13 Mr. Sneddon first so we can, at least, move him along?
 14 THE COURT: You want to do that first.
 15 MR. KISE: Yes, just to save the Court --
 16 the witness time.
 17 THE COURT: Okay. Would you like to call
 18 your first rebuttal witness?
 19 MS. FAHERTY: Yes, your Honor. The People
 20 call, as their first rebuttal witness, Kevin Sneddon,
 21 please.
 22 MR. KISE: And we, for the record, renew our
 23 objection to the allowance of this rebuttal testimony.
 24 THE COURT: Basically, denied without
 25 prejudice. If you think something is not a proper

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6600

1 subject of rebuttal, then you can object.
 2 COURT OFFICER: Witness entering.
 3 Please raise your right hand.
 4 Do you solemnly swear or affirm that any
 5 testimony you give will be the truth the whole truth
 6 and nothing but the truth?
 7 THE WITNESS: I do.
 8 KEVIN SNEDDON, called as a witness by the
 9 People, having been first duly sworn, testified as follows:
 10 COURT OFFICER: Please have a seat. Please
 11 state your name, either home or business address for
 12 the record.
 13 THE WITNESS: Kevin Sneddon, 17 Will Merry
 14 Lane, Greenwich, Connecticut.
 15 THE COURT: Welcome.
 16 Ms. Faherty, please, proceed.
 17 MS. FAHERTY: Thank you, your Honor.
 18 DIRECT EXAMINATION
 19 BY MS. FAHERTY:
 20 Q. Good afternoon, Mr. Sneddon.
 21 A. Good afternoon.
 22 Q. Can you please state your educational background,
 23 please?
 24 A. Sure. I have a Bachelor of Science, I did 30
 25 credits of post-graduate study and then, I worked in

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ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS December 12, 2023

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6601

1 corporate America before I got into real estate.
 2 Q. And, where did you get your Bachelor's Degree
 3 from, sir?
 4 A. East Stroudsburg University, in Pennsylvania.
 5 Q. The 30 extra credits -- post-graduate credits --
 6 you received, where was that from?
 7 A. St. John's University.
 8 Q. Do you currently hold any professional licenses,
 9 sir.
 10 A. Real estate brokers license; the State of New York
 11 and State of Connecticut.
 12 Q. Any other licenses?
 13 A. No.
 14 Q. How long have you held your real estate broker's
 15 license in the State of New York?
 16 A. Since 2004.
 17 Q. And that is still a, currently, active real estate
 18 broker's license, correct?
 19 A. Yes.
 20 Q. Are you, currently, employed?
 21 A. I am an independent contractor, associate broker
 22 with Compass.
 23 Q. And what are you employed to do in your associated
 24 work with Compass?
 25 A. Sell residential real estate.

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6603

1 A. To broker real estate on behalf of the Trump Org
 2 and to oversee salespersons.
 3 Q. How many persons did you oversee?
 4 A. Eight to ten.
 5 Q. Focusing on your time period working at TIR, were
 6 you aware that Donald J. Trump owned a personal residence at
 7 Trump Tower?
 8 A. I was aware.
 9 MR. KISE: Objection.
 10 THE COURT: Ground.
 11 MR. KISE: What is this rebutting? It is
 12 back to the same objection. This is something that
 13 could easily have been elicited on their direct case.
 14 What issue does this go to?
 15 THE COURT: I assume this is just some sort
 16 of background to questions about that.
 17 MS. FAHERTY: This is two questions away
 18 from putting the transcript up for which I need this
 19 witnesses' rebuttal testimony, your Honor.
 20 THE COURT: There is, certainly, no
 21 prejudice. There is no jury. Even if there was a
 22 jury, there is no prejudice. We all know this fact.
 23 So again, I am just considering you're sort of focusing
 24 the witnesses' attention on something?
 25 MS. FAHERTY: I am, your Honor.

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6602

1 Q. For how long have you been doing that?
 2 A. Since 2004.
 3 Q. How long have you been doing that for Compass --
 4 in connection with your association with Compass?
 5 A. Since 2018.
 6 Q. Where were you before 2018 in your employment?
 7 A. I was an independent broker, had my own business.
 8 Q. Did there ever come a point in time when you were
 9 employed with an organization known as Trump International
 10 Realty?
 11 A. Yes.
 12 Q. At what period of time, in your professional
 13 career, were you employed with and -- if I say, "TIR" would
 14 you recognize that entity?
 15 A. That's fine.
 16 Q. What period of time were you with TIR, sir?
 17 A. I would say late winter 2011 through late winter
 18 2012.
 19 Q. What title did you hold while you were with TIR?
 20 A. I was the managing director of the brokerage
 21 office.
 22 Q. Was managing director the title you held?
 23 A. Yes.
 24 Q. Broadly speaking, what were the duties and
 25 responsibilities you had at TIR?

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6604

1 THE COURT: Overruled, without prejudice.
 2 MS. FAHERTY: Can we get a read back of my
 3 question? I don't believe there was an answer.
 4 THE COURT: Read back the question, please.
 5 (The testimony as requested was read by the
 6 reporter.)
 7 MS. FAHERTY: Thank you, your Honor.
 8 A. Yes.
 9 Q. Just, generally, describe for me what that
 10 awareness was you had about Mr. Trump's residence?
 11 A. It was well-documented in the press. You know, I
 12 knew before I worked there.
 13 Q. Was it a Triplex living abode in which he had a
 14 personal residence at Trump Tower?
 15 Does that sound familiar?
 16 MR. KISE: Objection, leading.
 17 THE COURT: Sustained.
 18 Q. Can you describe the general description of the
 19 living situation Mr. Trump held at his personal residence at
 20 Trump Tower?
 21 A. I just knew it was the penthouse. I didn't really
 22 know much about the apartment itself.
 23 Q. Okay. I'm going to put on the screen testimony we
 24 heard earlier in this trial.
 25 MS. FAHERTY: If we could pull up the

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K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6605

1 testimony of Jeff McConney, starting at transcript page
2 5001.
3 Q. And, we'll direct your attention to line 20. And
4 we're going to continue onto page 5003.
5 MS. FAHERTY: Counsel, directing your
6 attention to this.
7 Q. And, I am going to read this testimony to you in a
8 question and answer form. And, I am going to ask some
9 questions. Okay?
10 A. Okay.
11 Q. Beginning at line twenty, there was a question.
12 "Do you see there where you have a value for the
13 Triplex apartment?"
14 MS. FAHERTY: Mr. McConney responds, yes.
15 "QUESTION: Do you see -- can you explain to
16 me the basis for valuing the Triplex apartment?
17 "ANSWER: For the June of 2015 statement?
18 THE COURT: Question mark.
19 MS. FAHERTY: Yes, question mark.
20 "QUESTION: Yes.
21 "ANSWER: We've reached out to our sale's
22 office, Trump International Realty, and asked them to
23 provide us with an amount per square foot so we
24 could -- which we used to value the um Triplex.
25 Believe the e-mail said -- the Triplex is 30,000 square

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6606

1 feet. It was something about \$10,900 per square foot
2 multiply the two and came up with the
3 327 million-dollar.
4 MS. FAHERTY: And we'll scroll to the next
5 page. It continues on. On page 5003.
6 "QUESTION: What was the value of 30,000
7 square feet input into the spreadsheet.
8 MS. FAHERTY: Mr. McConney's answer.
9 "It was the mechanism so I knew, from year to
10 year, what the value was based on. Sometimes I would
11 just look at the spreadsheet. And this way, I didn't
12 have to go to all of the voluminous backup we had. It
13 reminded me how we valued the property at that point in
14 time.
15 "QUESTION: Where would you have come up
16 with the number 30,000 square feet?
17 "ANSWER: The person running TIR at the
18 time, Kevin Sneddon sent me an e-mail that the Triplex
19 was 30,000 square feet.
20 "QUESTION: Was the 30,000 square feet
21 figure used to inflate the price of the Triplex.
22 "ANSWER: It was used based on the
23 information I received from somebody who knows. He is
24 the broker. I would rely on him because, I figured he
25 knew the property a lot better than I did.

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6607

1 "QUESTION: Have you Mr. McConney ever
2 personally walked through the entirety of the Triplex?
3 "ANSWER: The entirety? No.
4 "QUESTION: Have you ever measured how many
5 square feet the Triplex is?
6 "ANSWER: No.
7 MR. KISE: Is there a question there, your
8 Honor.
9 THE COURT: Not yet.
10 MS. FAHERTY: I appreciate the pause,
11 Mr. Kise.
12 Q. Mr. Sneddon, do you recall sending Mr. McConney an
13 e-mail advising him that the Triplex was 30,000 square feet?
14 MR. KISE: Objection, your Honor. So, this
15 falls squarely within the case law that we've already
16 cited to your Honor.
17 Rebuttal evidence is not merely evidence
18 which contradicts the defendant's evidence and
19 corroborates that of the plaintiff. It is evidence
20 which overcomes some new matter that the defendant has
21 proffered in reply.
22 This subject matter was covered when they
23 called Mr. McConney and Mr. Weisselberg in their case
24 and chief. They could have called and should have
25 called Mr. Sneddon at that time during their case and

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1 chief.
2 The fact that it came up again in the defense
3 case, on Mr. McConney's second trip to the stand, does
4 not now render this witness' testimony rebuttal
5 testimony.
6 It may contradict or it may be different
7 than, in there view, what Mr. McConney testified to.
8 But this is squarely within the prohibition of the
9 cases we cited to your Honor from the Court of Appeals
10 on down. There's no basis to admit this now.
11 Again, a hole in their case that they would
12 like to backfill. And, this is -- they certainly could
13 have asked Mr. Weisselberg in their case and chief.
14 They called him. They could have asked Mr. McConney in
15 their case and chief. They called him. And, they
16 certainly could have called Mr. Sneddon to address
17 these points.
18 These are affirmative points that go straight
19 to their burden of proof. This is not a new matter
20 that we have brought up or some new fact that has come
21 to light. These are facts that are well -- this is
22 known and have been well known for some time.
23 So there is just no basis to admit any
24 testimony relevant to the --
25 MR. WALLACE: If we're going to talk about

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1 this, the witness should be excused if we're going to
 2 repeat this. But, I think we covered this ground
 3 extensively.
 4 THE COURT: Do you want him excused or not?
 5 MR. WALLACE: Please.
 6 MS. FAHERTY: Sorry, Mr. Sneddon.
 7 MR. KISE: Your Honor --
 8 THE COURT: I think Mr. Wallace --
 9 MR. KISE: I had something to add for the
 10 record that I think is relevant a specific reference.
 11 On Mr. McConney, when they called
 12 Mr. McConney on their case, at page 637 of the
 13 transcript, they asked, specifically, about this
 14 e-mail.
 15 "And then, you asked him to send you the
 16 e-mail he sent to Mr. Weisselberg, right?"
 17 This is Mr. Amer's examination of
 18 Mr. McConney.
 19 "ANSWER: Yes.
 20 MR. KISE: And then he responds at, quote,
 21 at 30,000 square feet. DJT Triplex is worth 4,000 to
 22 6,000 per foot or 120 million to 180 million, right?"
 23 "ANSWER: Yes.
 24 "Okay. And this is a point in time where
 25 you're still using 30,000 square feet for the valuation

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6611

1 chief that Mr. McConney, for the first time, identified
 2 this witness, Mr. Sneddon, as the source of the 30,000
 3 square foot figure.
 4 And if we are allowed to elicit the testimony
 5 from this witness, on rebuttal, the Court would hear
 6 that he did not calculate that number, that, that
 7 number was provided to him by Mr. Weisselberg.
 8 That's why we need this testimony. Because,
 9 for the first time, on their case, they put in evidence
 10 suggesting or indicating that Mr. Sneddon was the one
 11 who calculated the 30,000 square feet. That's wrong.
 12 We're entitled, on rebuttal, to establish
 13 that, that evidence, that was put in on their case, not
 14 on our direct case -- there's nothing on page 637 that
 15 identifies who calculated that figure.
 16 And it is certainly within your Honor's
 17 discretion to allow this under the cases we were citing
 18 before.
 19 THE COURT: Should you have asked him where
 20 he got this from?
 21 MR. KISE: Absolutely. That's the point.
 22 The e-mail is mentioned right there at the top of page
 23 637. And that's exactly right. They had every
 24 opportunity.
 25 The testimony was elicited on by them in both

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6610

1 of Mr. Trump's Triplex?"
 2 "Right."
 3 So, this is on page 637.
 4 THE COURT: Slow down a little.
 5 MR. KISE: Sorry. 637. I am just looking
 6 at lines one through ten where this issue came up in
 7 their case and chief. And again, this falls, squarely,
 8 within the prohibition set forth in the case law that
 9 we have recited to your Honor that -- they haven't
 10 opposed any of that case law or cited any exception to
 11 it.
 12 So its just not the proper subject of
 13 rebuttal testimony. This is backfilling their case
 14 with testimony.
 15 Simply because it contradicts our evidence
 16 doesn't make it rebuttal testimony. And that's what
 17 the cases provide.
 18 MR. AMER: If I may, your Honor since I
 19 elicited this testimony back on, believe it or not, on
 20 October 5th.
 21 The testimony was about 30,000 square feet
 22 being something that was communicated to Mr. McConney.
 23 But, at no time, was Mr. McConney asked where he got
 24 that square footage from or who calculated it. It was
 25 only when they called Mr. McConney on their case and

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6612

1 instances; on their direct case and in our case. They
 2 certainly were aware of this e-mail and this issue.
 3 they interviewed Mr. Sneddon some three plus years ago.
 4 They've known about this issue. They asked about it in
 5 depositions. They asked about it with Mr. Weisselberg.
 6 MR. AMER: That's not the standard for
 7 rebuttal. We had no obligation it elicit the
 8 testimony. But, once it was elicited, on their case,
 9 we're entitled to rebut it.
 10 MR. KISE: They put the e-mail in evidence
 11 in their case I believe; PX 1052.
 12 MR. AMER: The e-mail says nothing about who
 13 calculated the value.
 14 MR. KISE: As your Honor said, that's your
 15 fault for not asking the question. That's the whole
 16 point of the case law. If you don't ask the question,
 17 if you decide, in your affirmative case, not to elicit
 18 the testimony that you believe necessary to establish
 19 your case, you can't hold it back and then wait and see
 20 what happens, in our case, and then declare it all
 21 rebuttal.
 22 That's, essentially, what they've done with
 23 most of their witnesses. If you look, their witness
 24 list is filled with rebuttal witnesses.
 25 MR. WALLACE: Whom we are not calling

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1 because --

2 THE COURT: I'm sorry?

3 MR. WALLACE: Whom we're not calling. We're

4 calling two witnesses to respond to testimony that was

5 presented in the defendants' case.

6 This is not controversial. This is not -- we

7 have three lawyers standing up at the defense table

8 over a witness who's going to testify -- if we can get

9 him back in here -- in less time that it takes Mr. Kise

10 to make an argument.

11 MR. KISE: We don't suspend the rules

12 because it's one or two witnesses and it won't take a

13 lot of the time. The rules are the rules. They know

14 the game. They know how to play the game. If they

15 don't, then it's their fault.

16 THE COURT: Plaintiff, was it essential to

17 your case to get this evidence or testimony in?

18 MR. AMER: It was not essential because we

19 had the e-mail that established that Mr. McConney was

20 told it was 30,000 square feet. We didn't have to

21 establish who calculated that value.

22 But, once they put in evidence, on their

23 case, saying that it was Mr. Sneddon, we are certainly

24 entitled to challenge that factual assertion on

25 rebuttal. That's what rebuttal is for. Because they

K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6615

1 "Oh, no, you gotta go out in the hallway for 20

2 minutes."

3 Okay. Mr. Faherty, please continue.

4 MS. FAHERTY: I think there was a question

5 pending, your Honor. May I have a read back please.

6 THE COURT: Please.

7 (The testimony as requested was read by the

8 reporter.)

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K.Sneddon - Plaintiff - Direct/Ms.Faherty Page 6614

1 are going to make a big deal out of it on their case.

2 MR. KISE: So your Honor, by putting the

3 e-mail in, the only evidence at the close of their case

4 was that the e-mail was sent from Mr. Sneddon to

5 Mr. McConney. That was the state of the evidence at

6 the end of their case.

7 If they wanted to dispute the idea that

8 Mr. Sneddon didn't provide that number that's reflected

9 in the documentary evidence -- they were always talking

10 about this is a documents case, this is one of those

11 documents.

12 If they wanted to dispute that, then they

13 certainly should have done so in their case and chief.

14 They knew about this. They introduced this document.

15 They asked about the e-mail in the transcript. There

16 is no question that this is improper rebuttal. And its

17 no question that this is just backfilling a hole in

18 their case.

19 THE COURT: And there is no question but

20 that. I'm going to overrule the objection. It's new.

21 And it wasn't part of the case they had to put in. The

22 defendants' witness brought it up. Now, I am allowing

23 the rebuttal.

24 Let's get the witness back.

25 Its like being invited to a dinner party and

K. Sneddon - by Plaintiff - Direct (Ms. Faherty) Page 6616

1 DIRECT EXAMINATION

2 BY MS. FAHERTY:

3 A I don't recall.

4 Q Okay. Let's put up plaintiff's exhibit PX10?

5 MR. KISE: I don't think the answer made it into

6 the record. I don't see that there.

7 THE COURT: Okay, next question.

8 Q Turning your attention to the document that's on the

9 screen in front of you, the court officer is handing it up to

10 you. You can look at either, sir. Just looking at the cover

11 e-mail on this document, do you recognize that e-mail in the

12 "from line" entry there?

13 A Yes.

14 Q Did you have an e-mail address associated with the work

15 you performed at Trump International Realty?

16 A Yes.

17 Q And were you employed at TIR on September 20, 2012?

18 A Yes.

19 Q Okay. Let's scroll down to the bottom of the first

20 page. And I'll just represent to you the bottom e-mail carries

21 over on to the second page so actually if you could put them

22 both on the screen.

23 MR. KISE: Your Honor, just for record, this is

24 exact same e-mail PX1052 that they introduced already in

25 their case and they are now going to ask him questions about

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1 it on a rebuttal case when this was in the record at the
 2 time of their case.
 3 THE COURT: Objection. Overruled.
 4 Q Drawing your attention to this e-mail from you sent on
 5 Wednesday, September 19, 2012. It's addressed to Cathy K. with
 6 a "CC" to Jeff McConney and that's your name again there, Kevin
 7 Sneddon, right?
 8 A Yes.
 9 Q Do you see the subject there is re, colon, forward
 10 colon, DJT Triplex?
 11 A Yes.
 12 Q Okay. And do you recognize the name Cathy K.?
 13 A Yes, she was my direct supervisor at TIR.
 14 Q And do you recognize the name Jeff McConney?
 15 A Yes.
 16 MR. ROBERT: Objection. Miss Faherty said the
 17 e-mail you sent. The e-mail she is talking about is from
 18 Cathy K. to Mr. Sneddon. Mr. Sneddon didn't send the
 19 e-mail.
 20 THE COURT: She's talking about the other earlier.
 21 MS. FAHERTY: Counsel, I will go quicker if I can
 22 proceed.
 23 MR. ROBERT: If you can ask a proper question.
 24 MS. FAHERTY: It was a proper question.
 25 MR. ROBERT: You don't need to raise your voice to

K. Sneddon - by Plaintiff - Direct (Ms. Faherty) Page 6619

1 A Yes.
 2 Q And just turning your attention to that very first
 3 sentence, I already valued DJT's Triplex for Allen. Who's
 4 Allen?
 5 A Allen Wiesselberg.
 6 MR. KISE: Same objection. Your Honor, can we just
 7 have a standing objection to this entire line of questioning
 8 so we can move this along. This is all improper rebuttal in
 9 our view.
 10 THE COURT: You got the standing objection. Let's
 11 go.
 12 Q Sorry. Can you repeat back your answer for me. Who's
 13 Allen the reference to?
 14 A Allen Weisselberg.
 15 Q Who's Allen Weisselberg?
 16 A He was the CFO of Trump Org.
 17 Q What are you referring to when you write DJT's Triplex
 18 in this message?
 19 A Mr. Trump's Triplex penthouse, Trump Tower.
 20 Q Were you ever asked to assess the value of Mr. Trump's
 21 Triplex apartment?
 22 A Yes.
 23 Q Who asked you to value Mr. Trump's Triplex apartment?
 24 A Allen Weisselberg.
 25 Q In what way or in what manner did Mr. Weisselberg ask

K. Sneddon - by Plaintiff - Direct (Ms. Faherty) Page 6618

1 me.
 2 MS. FAHERTY: I said at the bottom of the first
 3 page that carries over to the top of the second page. I am
 4 going slowly so you can follow along. I can slow it down
 5 more if you would like.
 6 MR. ROBERT: Maybe, if you would, that would be
 7 great.
 8 THE COURT: Just go at a reasonable speed.
 9 MS. FAHERTY: Thank you, Your Honor.
 10 CONT'D DIRECT EXAMINATION
 11 BY MS. FAHERTY:
 12 Q I believe my question was who was Cathy K?
 13 A My direct supervisor at TIR.
 14 Q And in the body of this e-mail it says, "I already
 15 valued DJT's Triplex for Allen our 75MM -- is that million?
 16 A Yes.
 17 Q -- Triplex listing is in 240 RSB, period. Total square
 18 footage is 14.5K including main residence, guest residence, and
 19 staff residence, period. As is 5K plus per foot."
 20 Do you see that there?
 21 A Yes.
 22 Q Looking at this e-mail, do you recall sending this
 23 message on September 19, 2012?
 24 MR. KISE: Objection. Improper rebuttal.
 25 THE COURT: Overruled.

K. Sneddon - by Plaintiff - Direct (Ms. Faherty) Page 6620

1 you to value Mr. Trump's Triplex apartment?
 2 A He called me on the phone.
 3 MR. KISE: Objection. Vague.
 4 THE COURT: Overruled.
 5 A He called me on the phone and asked me if I could give
 6 him a rough, you know, market value of the Triplex.
 7 Q Other than asking you for a rough market value of the
 8 Triplex, did he say anything else?
 9 A No.
 10 Q What did you say in response to his request to provide
 11 a value for Mr. Trump's Triplex?
 12 A I asked if I could see it, and he said that was not
 13 possible. So I asked if there was a floor plan or any specks
 14 and he said he didn't have any of that information. So I asked
 15 him, well, you know, what size is it.
 16 Q And what do you recall did he say to you in response to
 17 the question what is that size?
 18 A He said I think -- he said it's quite large. I think
 19 it's around 30,000 square feet.
 20 Q And why would the size of the apartment be information
 21 that you need in order to calculate a value for the Triplex?
 22 A Well, one metric in valuing residential real estate is
 23 square footage times, you know, the average selling price per
 24 square foot.
 25 Q Is that a metric you used today in your professional

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1 experience?
 2 A It's one metric, yeah.
 3 Q Did Mr. Weisselberg tell you why he was calling for
 4 your input on what Mr. Trump's Triplex would sale for?
 5 A Because we were valuing some of these sponsored units
 6 in various Trump buildings. And he called to ask about that
 7 process and asked if we could add the Triplex into that process.
 8 Q And in regard to that call with Mr. Weisselberg and
 9 after you received a square footage for the apartment, what was
 10 the response you gave to him about how to value the apartment?
 11 A I believe I gave him a range of I think around 4 to
 12 6,000 a foot at that time.
 13 Q Okay. Turning your attention back to Exhibit 105 --
 14 1052, Plaintiff's Exhibit 1052?
 15 MR. KISE: Your Honor, all of these questions and
 16 answers relate to communication that this witness had with
 17 Mr. Weisselberg. Mr. Weisselberg did not testify in our
 18 case. He testified in their case. The purported rebuttal
 19 is necessary for, as they say, Mr. McConney's testimony.
 20 Nothing here relates to any communication this witness had
 21 with Mr. McConney or any e-mails with Mr. McConney. This is
 22 all the witness testifying about communications with
 23 Mr. Wiesselberg, the subject of their direct case, could
 24 have been asked. It's all improper rebuttal. This is just
 25 filling the holes back in in their direct case, but this has

K. Sneddon - by Plaintiff - Direct (Ms. Faherty) Page 6623

1 Allen Weisselberg along to Jeff McConney in this message? Was
 2 this a reflection of the phone call you had with
 3 Mr. Weisselberg?
 4 MR. KISE: Objection. Leading.
 5 THE COURT: Sustained.
 6 Q This message to Mr. McConney is this a -- what is this
 7 a reflection of?
 8 MR. KISE: Objection. Asked and answered. A
 9 leading question. She just gave the witness the answer.
 10 Would you like to write it down for him so he can read the
 11 answer back?
 12 THE COURT: Objection overruled.
 13 I can't begin to count the amount of times that
 14 your team did this and I allowed it.
 15 MR. KISE: Disagreed completely, Your Honor. This
 16 is a free fall but, okay.
 17 A I know I spoke to Allen on the phone. I don't recall
 18 sending him an e-mail. Jeff might have thought I did. I don't
 19 remember. It was a long time ago.
 20 MS. FAHERTY: I think that's it, Your Honor.
 21 THE COURT: That's it?
 22 MS. FAHERTY: That's it.
 23 THE COURT: Okay.
 24 Any cross-examination of the rebuttal witness?
 25 MR. ROBERT: Yes, Your Honor.

K. Sneddon - by Plaintiff - Direct (Ms. Faherty) Page 6622

1 nothing to do with Mr. McConney's testimony. So that's
 2 the -- an additional reason why this is improper rebuttal.
 3 THE COURT: Plaintiff, any response?
 4 MR. AMER: It has everything to do with
 5 Mr. McConney's testimony that we saw on the screen and we've
 6 already argued this so I --
 7 THE COURT: Objection overruled, but incorporate it
 8 in the standing objection.
 9 CONT'D DIRECT EXAMINATION
 10 BY MS. FAHERTY:
 11 MS. FAHERTY: Can we scroll up to the next e-mail,
 12 higher up in this document, please, Ashley.
 13 Q Okay. There's an e-mail from Jeff McConney to you and
 14 Miss K. It states, "Thanks Kevin. Can you please send to me
 15 the e-mail you sent to Allen."
 16 And then if we scroll up to the next message dated
 17 Thursday, September 20, 2012, it is from you to Jeff McConney
 18 and Cathy K, still the same subject, "at 30,000 square feet,
 19 DJT's Triplex is worth between 4K to 6K per foot or 120 million
 20 to 180 million. You sent that message, correct?
 21 A Correct.
 22 Q This isn't a forward of an e-mail you sent to
 23 Mr. Weisselberg, right?
 24 A I don't believe so.
 25 Q How were you forwarding information you sent to

K. Sneddon - by Plaintiff - Cross (Mr. Robert) Page 6624

1 Good afternoon. May I proceed, Your Honor?
 2 THE COURT: Please.
 3 CROSS-EXAMINATION
 4 BY MR. ROBERT:
 5 Q Good afternoon, Mr. Sneddon.
 6 A Good afternoon.
 7 Q In answering Miss Faherty's questions, you used the
 8 word Jeff to refer to Jeff McConney; do you remember that?
 9 A Yes.
 10 Q You never met Jeff McConney before, did you?
 11 A I don't recall. I worked in a different building,
 12 different location.
 13 Q I am going to ask you a series of questions this
 14 afternoon, sir. I am going to ask you to answer them yes or no.
 15 If you can't, you tell me and I'll rephrase them. Fair enough,
 16 sir? Sir, you heard what I just said?
 17 A Yes.
 18 Q If you don't understand the question, you tell me and I
 19 will rephrase it, okay?
 20 A Okay.
 21 Q Otherwise, if you can answer my questions yes or no,
 22 understood?
 23 A Understood.
 24 Q So you didn't know Jeff McConney when you worked at the
 25 Trump Organization, correct?

K. Sneddon - by Plaintiff - Cross (Mr. Robert) Page 6625

1 A Correct.

2 Q As a matter of fact -- withdrawn.

3 You taken an examination under oath that Miss Faherty

4 asked you the questions of a long time ago back in March of

5 2021; do you remember that?

6 A Yes.

7 Q And prior to that official interview -- withdrawn.

8 That interview on March 4, 2021, that was with a court

9 reporter, right?

10 A Yes.

11 Q And --

12 THE COURT: Hold on. You need to speak closer to

13 the mic, louder, clearer.

14 Q And you remember there was a court reporter?

15 A Yes.

16 Q You promised to tell the truth?

17 A Is this -- yeah. Yes.

18 Q You took an oath to tell the truth that day, correct?

19 A Yes.

20 Q Prior to that interview under oath, you had a

21 conversation with Miss Faherty, correct?

22 A Yes.

23 Q And that conversation was about a month or so earlier,

24 correct?

25 A Yes.

K. Sneddon - by Plaintiff - Cross (Mr. Robert) Page 6626

1 Q And that conversation -- and during that conversation,

2 Miss Faherty explained to you who Jeff McConney was, right?

3 A Yes.

4 Q Because prior to Miss Faherty explaining to you who

5 Jeff McConney was, you had no idea, right?

6 A Correct.

7 Q Okay. And during that conversation with Miss Faherty,

8 she explained to you the theory of the Attorney General's case,

9 correct?

10 A Yes.

11 Q As a matter of fact, it was the first time you had ever

12 heard of something called a statement of financial condition,

13 correct?

14 A Yes.

15 Q And Miss Faherty explained to you that part of this

16 case had to deal with the statement of financial condition,

17 correct?

18 A Yes.

19 Q And at that point, she told you based on how the

20 interview went she would decide whether to have you come and

21 testify under oath, correct?

22 A Yes.

23 Q And then based on that interview, she decided to have

24 you testify under oath, correct?

25 A Yes.

K. Sneddon - by Plaintiff - Cross (Mr. Robert) Page 6627

1 Q And during that interview, she explained to you the

2 issue of the square footage of the Triplex, correct?

3 A Yes.

4 MR. ROBERT: So, Your Honor, I got Triplex this

5 time. I'm learning. May be the last day of the trial, but

6 I am learning.

7 Q Prior to Miss Faherty --

8 THE COURT: Five-minute warning.

9 Q Prior to Miss Faherty mentioning to you the importance

10 of this 30,000 square foot Triplex issue you were unaware of it,

11 correct?

12 A Yes.

13 Q She told you an important part of the case was you

14 being able to say that you're not the person that came up with

15 the 30,000 feet, correct?

16 A Yes.

17 MR. ROBERT: Your Honor, this may be a good time to

18 take the afternoon break now. I may be able to truncate

19 this a lot.

20 THE COURT: Let's meet at 10 to 4.

21 MR. ROBERT: Thank you, sir.

22 THE COURT: I'll direct the witness don't discuss

23 this case or your testimony or anything related to it during

24 the break, okay. How about 5 to 4.

25 ///

K. Sneddon - by Plaintiff - Cross (Mr. Robert) Page 6628

1 (Whereupon, the witness was excused from the

2 stand.)

3 (Whereupon, a recess was taken.)

4 COURT OFFICER: All rise. Part 37 is back in

5 session. Please be seated and come to order.

6 THE COURT: I apologize for the delay. Let's get

7 right to it.

8 MR. ROBERT: I'm done with the witness, Your Honor.

9 No further questions.

10 THE COURT: Will there be any redirect?

11 MS. FAHERTY: No redirect, Your Honor.

12 THE COURT: Everybody is finished. Witness

13 excused. Thank you.

14 (Whereupon, the witness was excused from the

15 stand.)

16 THE COURT: Okay. Before we call the next witness,

17 let's discuss -- he's not here, right?

18 MR. WALLACE: The witness is here, Your Honor. He

19 is an expert. So, if we need to excuse him to discuss

20 defendants' motion.

21 THE COURT: Just right outside the door. I hope

22 this will be brief. We need to discuss the substance of the

23 latest letter about this witness's report and its

24 admissibility or lack thereof.

25 MR. KISE: So, Your Honor, we submitted our letter.

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1 I'll be brief. I won't go through every point. As Your
 2 Honor knows, to be qualified as an expert, the witness must
 3 possess the requisite, skill, training, education, knowledge
 4 or experience from which it can be assumed the opinion
 5 rendered is reliable. And we cite to the Court the
 6 Schechter, S-C-H-E-C-H-T-E-R, case from the First Department
 7 and several others.

8 Mr. Lewis does not possess the requisite
 9 qualifications. He's not a certified public accountant.
 10 He's never sat for the certified public accounting exam.
 11 His accounting degree is -- his accounting degree, in
 12 quotes, his Ph.D. is from an engineering school. His Ph.D.
 13 is actually in engineering not accounting. He doesn't even
 14 have an undergraduate degree in accounting. He has no
 15 experience at all practicing accounting, none. He's got no
 16 experience preparing, reviewing or using compilation
 17 statements. He has got no experience auditing financial
 18 statements. He's got no experience preparing or using
 19 personal financial statements.

20 He's a professor of practice with no experience in
 21 the practice of accounting. He has no lectures that we can
 22 uncover that he's identified relative to compilations of
 23 personal financial statements or any of the other issues at
 24 issue herein. He has no publications or research relative
 25 to compilation personal financial statements or any of the

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1 other issues here.

2 He has no peer review publications at all. And at
 3 least as far as our research indicates, there are zero
 4 citations to any of his published works. His most recent
 5 publications relate to taxpayer identification numbers. I'm
 6 not sure that that has anything to do with any of the issues
 7 in this case.

8 In 2021 and 2019, again, these aren't peer review
 9 publications. They are just publications about
 10 understanding taxpayer identification numbers and the
 11 history of taxpayer identification numbers. He's simply
 12 offering his general opinion after reading the relative
 13 accounting guidance, but where an expert is generally
 14 familiar with the subject area but otherwise has no specific
 15 training or experience pertaining to that subject area, then
 16 the expert clearly lacks the requisite skill, knowledge,
 17 training or experience from which it can be assumed he is
 18 reliable.

19 The Lessard case, L-E-S-S-A-R-D, the Beeley case,
 20 B-E-L -- B-E-E-L-E-Y, the Fortich case, F-O-R-T-I-C-H, and
 21 those three cases, two of those are the Beeley and Fortich
 22 cases are Court of Appeals cases that make this same point.
 23 In the Beeley case, there was an accident reconstruction
 24 specialist that lacked the qualifications to testify about
 25 the functions of brakes.

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1 In the Fortich case, there was a general surgeon
 2 offering testimony regarding plastic surgery procedures
 3 outside of his field of practice and the Court of Appeals
 4 held that that expert doesn't possess sufficient knowledge
 5 or expertise to testify outside his or her specialty.

6 Here, Professor Lewis doesn't even have a
 7 specialty. Also, Professor Lewis admits that his
 8 materiality test was made up, that he created his own test
 9 to determine whether the statements or omissions in the
 10 statements of financial condition were material to his
 11 readers. And we cite the Court in our letter to specific
 12 language where he admits that.

13 "QUESTION: I just wanted to make sure that that
 14 was your test, meaning the materiality test, and not
 15 anything that's mandated by or per literature?
 16 "ANSWER: Correct."
 17 MR. KISE: So under Frye, as the Court knows, the
 18 techniques have to be, when properly performed, have to
 19 generate results accepted as reliable within the relevant
 20 community. A test that Mr. Lewis his self-developed mandate
 21 is definitionally not supported by GAAP and it doesn't pass
 22 the Frye test. It doesn't even attempt to pass the Frye
 23 test. A test that he created himself cannot conceivably be
 24 one that is generally acceptable in the field of accounting.
 25 So his opinions -- and we cite the Court to a

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1 number of cases on that point. I believe the Cornell case,
 2 curiously enough, no relation, but Cornell 22 NY 3d at 7662,
 3 I believe that's a Court of Appeals case, and several other
 4 cases that deal with the relevant Frye standard and the
 5 proposition that his opinion should be disregarded where he
 6 has no authority or standard to cite or support it and he
 7 has created his own test.

8 There are several other matters with respect to his
 9 opinions raised in our letters. I won't go through all of
 10 them, but in sum and substance, this witness doesn't even
 11 come close to possessing the requisite qualifications to
 12 testify about the subject matters at issue in this case.
 13 And we would also renew our objection on -- on the rebuttal
 14 evidence. It's improper rebuttal evidence.

15 THE COURT: Do you want to give up and go home?
 16 MR. WALLACE: I will take the answer in two parts.
 17 I don't want to give up, but I do want to go home. So, sort
 18 of Cornell was mentioned in passing. Professor Lewis is a
 19 professor of accounting at Cornell. He directs, he
 20 masters --
 21 THE COURT: You don't think so?
 22 MR. KISE: No. He heads the master of -- Master of
 23 Professional Studies which, from what I can tell, is a
 24 ten-month program for nonbusiness majors and you don't need
 25 any minimal GPA to get in. It is intended to be

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1 introductory in nature. It is cursory business review
 2 course. No. As I said, he is the professor of practice
 3 which isn't like Professor Bartov on the tenure track and
 4 contributing to the research and development of accounting.
 5 He is professor of practice that doesn't even have any
 6 experience in the practice of accounting.
 7 MR. WALLACE: As opposed to experience in Israel
 8 40 years ago. Some of the things that I'm hearing here also
 9 could have been said about Professor Bartov. He is not a
 10 practitioner. In fact, I think you heard from Professor
 11 Bartov that there is no materiality test in the literature,
 12 that that is not required and Professor Bartov came up with
 13 his own based on how he reacted to Professor Lewis's
 14 materiality test.
 15 This idea that there's some standard that Professor
 16 Lewis hasn't passed is laughable. He's been qualified as an
 17 expert in this court.
 18 THE COURT: As a what? In what case by what judge?
 19 MR. WALLACE: It was by Judge Debra James. It was,
 20 I believe, in accounting and valuation. He's been qualified
 21 as an expert in accounting valuation in multiple cases which
 22 is one of the things we were planning to walk him through as
 23 we move to qualify him. If Mr. Kise is not particularly
 24 impressed with professors of practice or a professor who
 25 doesn't have tenure, that's fine. He's now established that

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1 and they can explore that further on cross-examination. He
 2 is eminently familiar with the accounting standards. He is
 3 eminently qualified to an expert.
 4 You know, the slight of hand in their papers are a
 5 little silly. They can claim his Ph.D. is in engineering,
 6 engineering systems. He has a concentration in accounting.
 7 His doctorate dissertation was in an examination of the use
 8 of accounting based risk measures for the valuation of
 9 closely held businesses. The idea that he's not qualified
 10 to be an expert is laughable.
 11 MR. KISE: So, Your Honor --
 12 THE COURT: Quickly.
 13 MR. KISE: -- there is a materiality test. What
 14 Professor Bartov just testified to today is there are
 15 materiality tests in the literature.
 16 THE COURT: Let's not talk about Bartov.
 17 MR. KISE: Because it's relevant to what he said.
 18 THE COURT: Maybe, I am ignoring that part of what
 19 he said. I just want to hear about Lewis. What's his
 20 official title?
 21 MR. KISE: Professor Lewis, the difference is
 22 Professor Lewis made up his own test. That's different than
 23 taking a test -- taking a -- choices from the available
 24 representations and it is slight of hand to say that his
 25 degree -- I got my accounting degree from business school.

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1 That's where you get accounting degrees from. I don't have
 2 engineering degree. I have an accounting degree. This man
 3 has a Ph.D. in engineering systems and he claims that it's
 4 somehow or another related to accounting as if the Cornell
 5 business school wants to pass him off as that as a professor
 6 of practice with no experience in the practice, that's fine.
 7 But for purposes of qualifying him as an expert on the
 8 issues in this case, in this case, I don't know about any
 9 other cases, but the issues in this case, he doesn't
 10 qualify.
 11 THE COURT: Can we bring him in and question him
 12 for five minutes or so?
 13 MR. WALLACE: Why not, Your Honor.
 14 MR. KISE: Then I would have an opportunity to voir
 15 dire him then.
 16 THE COURT: Of course.
 17 MR. KISE: Thank you.
 18 COURT OFFICER:
 19 E R I C L E W I S, a witness called by and on behalf of
 20 the Plaintiff, upon being duly sworn, was examined and testified
 21 as follows:
 22 THE WITNESS: I do.
 23 COURT OFFICER: Please have a seat. Please state
 24 your name either home or business address for the record.
 25 THE WITNESS: My name is Eric Lewis. I reside at 9

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1 Westview Ct. Clifford Park, New York.
 2 (Continued on next page)
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Lewis - Plaintiff - Direct/Mr. Wallace Page 6637

1 THE COURT: Mr. Wallace, go ahead.
 2 DIRECT EXAMINATION
 3 BY MR. WALLACE:
 4 Q. Good afternoon, Professor Lewis.
 5 Could you please tell us your current academic
 6 position?
 7 A. Currently, I serve as a Professor of Practice and
 8 as Director of the Master's Program in Accounting and the
 9 Master's Program in Management at the Johnson College of
 10 Business at Cornell University.
 11 Q. What are your responsibilities in those positions?
 12 A. So as a Professor of Practice, I teach several
 13 classes. I teach a class in Advanced Financial Accounting.
 14 I teach a class that is a core undergraduate class in
 15 managerial accounting. I teach the sequel to that course,
 16 cost accounting. I teach, on a rotational basis, our
 17 auditing and assurance course. I teach another course that
 18 I develop -- I developed several of those courses. I teach
 19 a course in accounting systems and analytics that I
 20 developed.
 21 As the director of the Master's programs, one of
 22 them -- I was on the creation committee. So I wrote most of
 23 the curriculum.
 24 I got that program through the New York State
 25 Education Department Process for Certification. I meet

Lewis - Plaintiff - Direct/Mr. Wallace Page 6638

1 regularly with the department chairs to appoint the faculty
 2 who will teach in the program, oversee changes to the
 3 curriculum, sit on the admission's committee, adjudicate
 4 anything that needs to be handled between students and
 5 faculty or students with each other. And I manage the
 6 budgeting for both of the Master's programs.
 7 Q. Do you teach any courses that cover personal
 8 financial statements as a topic?
 9 A. In the advanced accounting course, I teach a
 10 module on partnerships. And as part of that module on
 11 partnerships, when we discuss the dissolution of
 12 partnerships -- when partnerships breakup -- often personal
 13 financial statements are the basis for determining the
 14 resources of individual partners.
 15 So there is a mini-piece of that -- a portion of
 16 that -- module on ASC 274 personal financial statements
 17 where we look at examples. We look at how they are produced
 18 and how they are supported.
 19 Q. Do you teach any courses that cover compilation
 20 engagements by an accountant as a topic?
 21 A. So on a rotational basis, I teach the auditing
 22 course. The auditing course discusses all of the levels of
 23 service that accountants can provide from zero assurance
 24 services to positive assurance services.
 25 Q. Let's talk a little bit about your background

Lewis - Plaintiff - Direct/Mr. Wallace Page 6639

1 before you began teaching.
 2 Do you hold any advance degrees?
 3 A. I do. I have an MBA in accounting from Union
 4 College. And I also hold a Ph.D. The specific title is
 5 Administrative and Engineering Systems with a Concentration
 6 in Accounting.
 7 Q. What does it mean that you had a concentration in
 8 accounting?
 9 A. The broad degree -- this was at Union College --
 10 the administrative and engineering systems was a single
 11 doctorate that the college offered. And, within that
 12 doctorate, there were concentration areas.
 13 So the concentration areas were really what each
 14 Ph.D student would study and would do their dissertation
 15 work on and would learn to teach and all the elements that a
 16 doctoral student would do. My area was accounting.
 17 Q. What was the subject of your dissertation?
 18 A. My dissertation was using mathematics from the
 19 capital asset pricing models to establish values for closely
 20 held businesses.
 21 Q. Do you hold any other degrees?
 22 A. I have an undergraduate degree in finance.
 23 Q. Where is that degree from?
 24 A. From Siena College.
 25 Q. Prior to starting your current academic position,

Lewis - Plaintiff - Direct/Mr. Wallace Page 6640

1 at Cornell, have you held any other academic appointments?
 2 A. I have held several academic appointments since
 3 1992. I began my academic career at a wonderful liberal
 4 arts college up in Saratoga, Springs called Skidmore
 5 College. That was the first place where I earned tenure.
 6 I went from Skidmore College to Ithaca College;
 7 where, again, I earned tenure for a second time. Left
 8 Ithaca College for Union Graduate College -- which was the
 9 new name for one of my alma maters -- and became the Dean of
 10 the School of Business at Union Graduate College. Once
 11 again tenured and a full professor at that school.
 12 I subsequently went back to another of my alma
 13 maters, Siena College, where I was for five years until
 14 Cornell contacted me.
 15 I had done some visiting appointments at Cornell.
 16 I was a visiting associate professor from 2007 to 2010. And
 17 they alerted me that they had a full-time position. And, I
 18 applied for it. And, that's the position I've currently
 19 held. I'm in my eighth year of that position at Cornell
 20 University.
 21 While I was a doctoral student, I also accepted
 22 and taught a full-time appointment at a State University of
 23 New York at New Paltz.
 24 Q. Is your current position, at Cornell, tenure
 25 eligible?

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ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS December 12, 2023

Lewis - Plaintiff - Direct/Mr. Wallace Page 6641

1 A. It is not.
 2 Q. So why would you give up a tenure position for a
 3 non-tenure position.
 4 A. So as you hear from my history, I have given up
 5 tenure positions multiple times. So I don't really ascribe
 6 the value to tenure that maybe some of my colleagues do. I
 7 like new ventures and new opportunities. And so, I have
 8 never really let tenure be the reason that I don't pursue
 9 something new.
 10 Q. And so, why did you decide to pursue the current
 11 position at Cornell?
 12 A. So the current position is really interesting.
 13 There was an opportunity, at Cornell, to create new
 14 programs. Of course, the students are very bright. And,
 15 you know, they challenge me everyday. So, it's just a
 16 wonderful thing to teach there. And I have tremendous
 17 colleagues.
 18 And, of course, Cornell is a well-known
 19 university. It has a lot of resources so that I am very
 20 well treated at Cornell. And I am given free reign to
 21 create curriculum in ways that I wasn't at other places.
 22 I have created more classes in the graduate
 23 program and the undergraduate program at Cornell than
 24 probably at all of the other places combined.
 25 Q. Just going back to -- I won't make you go back

Lewis - Plaintiff - Direct/Mr. Wallace Page 6642

1 through the entire history of your academic appointment.
 2 What were, generally, the subjects you taught
 3 throughout those positions?
 4 A. Consistently, I have taught advanced financial
 5 accounting. That's the class that has the module on
 6 partnerships where we discuss Statements of Financial
 7 Condition, personal financial statements in general.
 8 Q. So, you've taught advanced financial accounting
 9 throughout your academic career?
 10 A. Yes, right; about 30 years now.
 11 Q. Do you also conduct academic research?
 12 A. I do.
 13 Q. What are some of the areas that you focus on?
 14 A. So early in my career I was doing research that
 15 was, pretty closely, related to my doctoral dissertation.
 16 It was business valuation type research, valuing assets that
 17 are a little bit difficult to value because they don't have
 18 a ready market.
 19 So the first thing that I published post doctoral
 20 dissertation was a paper called "Valuing Intellectual
 21 Assets." That was published in the Journal of Legal
 22 Economics.
 23 I've also published papers on valuing companies
 24 that are in cyclical industries, valuing businesses that are
 25 sitting on large holding gains, preparing businesses for

Lewis - Plaintiff - Direct/Mr. Wallace Page 6643

1 evaluation if we're getting ready to sell a business.
 2 In the later years now -- in my current position,
 3 it doesn't require me to do research. But I have started to
 4 do advocacy type research.
 5 The last few things that I have done have related
 6 to representing low income taxpayers in front of the IRS or
 7 in tax Court. I just published a chapter for the American
 8 Bar Association on that.
 9 Q. And were any of your publications in peer reviewed
 10 journals?
 11 A. Yes. So, that journal of Legal Economics that I
 12 mentioned is a peer review journal, with a fairly low
 13 acceptance rate, which is one of the measures by which in
 14 academia we say, "Well, that's a good publication."
 15 Two of the other valuation papers that I mentioned
 16 were published in the Journal of Business Valuation and
 17 Economic Loss Analysis.
 18 And that's a journal where, after I published the
 19 second paper in that journal, in 2009, I was invited to join
 20 the editorial board. And I still do serve on that editorial
 21 board.
 22 Q. And, is the Journal of Business Valuation and
 23 Economic Loss Analysis peer reviewed?
 24 A. It is also peer reviewed.
 25 Q. What are your responsibilities on the editorial

Lewis - Plaintiff - Direct/Mr. Wallace Page 6644

1 board of that journal?
 2 A. So as a member of the editorial board, I fairly,
 3 regularly, receive papers that are candidates for
 4 publication in the journal.
 5 And, I am asked to review them for quality, make
 6 comments, propose edits and then recommend them to the
 7 editor for rejection, review and resubmittal or ultimate
 8 acceptance.
 9 Q. In addition to your work on the editorial board,
 10 for the journal, have you held any other professional
 11 affiliations?
 12 A. So, I keep a loose affiliation with the
 13 association of certified fraud examiners. I'm not a
 14 certified fraud examiner. But, I use some of
 15 publications -- Fraud Magazine being a big one -- so I stay
 16 associated with them.
 17 I have been an officer, held leadership positions,
 18 in the American Accounting Association which is the academic
 19 association for accountants -- mostly who teach at colleges
 20 and universities. But, also a few professional accountants.
 21 I have been the president of the northeast region
 22 of the American Accounting Association which is the region,
 23 roughly, from Maine to Rhode Island. And, around a
 24 thousand, a little bit over a thousand, accountants are part
 25 of that.

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ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS December 12, 2023

Lewis - Plaintiff - Direct/Mr. Wallace Page 6645

1 I have also been on the northeast Region Steering
 2 Committee and have been paper chair. So every year the
 3 region holds a conference -- the conference rotates from
 4 Boston to Hartford to Providence -- and somebody has to
 5 organize all of the academic papers that are going to be
 6 presented, decide who gets to present and who can't present.
 7 It's kind of like a journal review sort of process. I
 8 managed that process before I became region president.
 9 Q. Any other associations that you are involved with?
 10 A. The Institute of Management Accountants. I do
 11 teach managerial accounting and cost accounting. So I'm a
 12 member of the Institute of Management Accountants as well.
 13 Q. You're not a CPA; is that correct?
 14 A. I am not.
 15 Q. Do you have any affiliation with CPA industry
 16 organizations?
 17 A. I do not.
 18 Q. You do?
 19 A. I do not.
 20 Q. Okay. Do you, currently, hold any positions that
 21 involve real world financial reporting?
 22 A. I do. So, I am the current chair of the board of
 23 the Albany Academies.
 24 Q. And what are the Albany Academies?
 25 A. The Albany Academies are a boy school and a girl

Lewis - Plaintiff - Direct/Mr. Wallace Page 6646

1 school that are a private school in Albany New York, about
 2 210 years old.
 3 And, I have served on the Board of Trustees for 14
 4 years. I believe this is my 14th year on the Board of
 5 Trustees.
 6 And I have held positions of audit committee
 7 chair, finance committee chair and also on the finance
 8 committee, I have been on the subcommittee that managing the
 9 endowment for the school.
 10 Q. And what is the budget of the Albany Academies?
 11 A. It's about \$18 million a year.
 12 Q. And, so what was your role again in the budget --
 13 A. So, I was first the chair of the finance and audit
 14 committee simultaneously. Then some New York State
 15 regulations changed and one couldn't be chair of both. So I
 16 chose chair of the finance committee.
 17 With the finance committee, I was overseeing the
 18 budget, working with the accountants who prepare the tax
 19 returns for institution, signing those returns -- because,
 20 the finance chair was also the treasurer of the institution.
 21 As the audit committee chair, I would work with
 22 the auditors to understand the scope of their work, how
 23 their work was going, whether they were having any
 24 difficulties with the leadership team, getting the
 25 information that they needed.

Lewis - Plaintiff - Direct/Mr. Wallace Page 6647

1 So if they needed something from our CFO, I wanted
 2 to know that they were getting every bit of information that
 3 they needed.
 4 So I worked, in that sense, in that role with
 5 those issues.
 6 Q. Mr. Lewis, are you being compensated for your work
 7 on this case?
 8 A. I am.
 9 Q. At what rate are you being compensated?
 10 A. \$750 per hour.
 11 Q. Approximately, how many hours have you spent on
 12 this matter sense you were retained?
 13 A. Approximately, 200.
 14 Q. Have you, previously, appeared as an expert
 15 witness at trial?
 16 A. Yes, I have.
 17 Q. On about how many occasions?
 18 A. I believe this is the fourth occasion.
 19 Q. Fourth occasion?
 20 A. Yes.
 21 Q. What were the subjects of your prior expert
 22 engagements?
 23 A. They were business valuation and financial
 24 accounting.
 25 Q. Were you qualified, as an expert, in those case?

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1 A. I was.
 2 Q. Were any of those cases in New York State Supreme
 3 Court?
 4 A. They were.
 5 Q. New York County?
 6 A. Yes.
 7 Q. Do you remember the Judge who was presiding in
 8 that case.
 9 A. I believe it was Judge James.
 10 Q. And were you qualified as an expert in that case?
 11 A. Yes, I was.
 12 Q. Has a Court ever declined to qualify you as an
 13 expert?
 14 A. No.
 15 MR. WALLACE: Your Honor, we move to qualify
 16 Professor Lewis as an expert in the field of
 17 accounting?
 18 THE COURT: Accounting generally?
 19 MR. WALLACE: It's the same qualification we
 20 had for Mr. Flemmons. So, the field of accounting.
 21 THE COURT: As we had from Mr. --
 22 MR. WALLACE: Flemmons?
 23 THE COURT: Okay.
 24 Mr. Kise, go ahead.
 25 MR. KISE: So, generally, just accounting?

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1 That's the qualification. It's just generally
 2 qualified in accounting. That's a very broad field.
 3 To quote from Mr. Amer, that's pretty vague.
 4 Exactly, what, in accounting, is he here to
 5 testify about as an expert? He's just an expert in
 6 accounting generally?
 7 MR. WALLACE: Yes. I'll just quote from the
 8 trial transcript at page 4252 Line 14.
 9 "MR. SUAREZ: Your Honor, we tender
 10 Mr. Flemmons as an expert witness in the field of
 11 accounting.
 12 THE COURT: Granted. I hereby deem you an
 13 expert in the field of accounting. You are three for
 14 three.
 15 MR. KISE: Right. But, Mr. Flemmons had
 16 vast experience as a practicing accountant in the SEC
 17 in reviewing financial statements. I mean, you can't
 18 even compare the two. It is not even close.
 19 So, yes, to qualify Mr. Flemmons -- and, it
 20 was up to the government to make an objection if they
 21 didn't feel that he was qualified. The question --
 22 that's, certainly, one thing.
 23 But, to qualify this witness under that broad
 24 categorization, it's not even a close call, your Honor,
 25 in terms of the qualifications.

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1 MR. WALLACE: This is the time to voir dire.
 2 We're going to be qualifying him as an expert.
 3 The objection to the field of accounting was
 4 that it is vague. This is a professor at Cornell who
 5 teaches accounting, who teaches financial accounting.
 6 Unlike some of the other witnesses that have
 7 come in, teaches issues of personal financial
 8 statements, teaches compilations.
 9 I think these are the issues that are going
 10 to be discussed and are relevant to this case. I don't
 11 see an issue with either the category of the
 12 qualification or his actual qualifications.
 13 THE COURT: I believe that accounting is not
 14 that vague a field. Maybe math or something would be
 15 or numbers. I hereby deem him an expert in accounting.
 16 MR. KISE: No opportunity to voir dire the
 17 expert?
 18 MR. WALLACE: You didn't ask for an
 19 opportunity.
 20 MR. KISE: I just did ask.
 21 THE COURT: I'm sorry.
 22 MR. KISE: I asked for it twice, your Honor.
 23 THE COURT: Go ahead.
 24 MR. KISE: Do you want me to start now or
 25 start in the morning? It's going to take more than a

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1 If we have to go line by line, then we'll do
 2 that, looks like, tomorrow morning. But, what,
 3 exactly, is this witness being --
 4 First of all, he's a rebuttal witness; number
 5 one. And they have represented that his testimony is
 6 going to be very, narrow. They have told the Court
 7 that.
 8 So, what, precisely, is his expertise that
 9 we're going to hear about? Because, so far I haven't
 10 heard anything this he's particularly expert. I've
 11 just heard, generally, about accounting from an
 12 engineering school.
 13 So, what is it that, precisely -- he doesn't
 14 have the broad qualifications, he's not part of the
 15 research track, he's not part -- he doesn't contribute
 16 to the ongoing development of the profession.
 17 And so far, what we've heard about is a \$18
 18 million budget at the board of a kids' school. And
 19 he's an expert in accounting? We're just going to --
 20 that's the standard? The bar is fairly low if that's
 21 where we're headed.
 22 I would like them to, at least, define the
 23 scope of this expert's purported expertise so that when
 24 it comes time to voir dire we can focus on that.
 25 Because, he certainly doesn't seem to have much.

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6652

1 few minutes.
 2 THE COURT: Whatever it takes. If we have
 3 to run until tomorrow, we will. But, start now.
 4 I will just suggest the following, Mr. Kise.
 5 If you are going to -- maybe, the right word is --
 6 challenge or attack what he's saying, fine. If you are
 7 going to go into all sorts of areas that he might not
 8 know about accounting, I'm still going to -- that
 9 wouldn't change the decision. But, do what you --
 10 MR. KISE: I am not sure anything would
 11 change any decision in this courtroom respectfully.
 12 But, nonetheless, I will make the record.
 13 VOIR DIRE
 14 BY MR. KISE:
 15 Q. Good afternoon, Mr. Lewis.
 16 A. Good afternoon.
 17 Q. You're not a CPA, correct?
 18 A. I'm not.
 19 Q. You never sat for the CPA exam, right?
 20 A. Not taken the CPA.
 21 Q. Your undergraduate degree is not in accounting,
 22 correct?
 23 A. Correct.
 24 Q. Your Ph.D is in engineering, correct?
 25 A. It's in accounting.

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Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6653

1 Q. It's in engineering that's your degree.
 2 THE COURT: Slow down.
 3 Q. It's in engineering?
 4 A. In my opinion, it is in accounting.
 5 Q. I didn't ask what your opinion is. I asked what
 6 the piece of paper says. The piece of paper says,
 7 "engineering."
 8 A. It says, "Concentration: Accounting." It says,
 9 "Administrative and Engineering Systems."
 10 Q. You have no experience preparing, reviewing or
 11 using compilation statements in practice, correct?
 12 A. Very brief time in public accounting in the early
 13 1990s.
 14 Q. So, thirty years ago I believe you testified that
 15 you were a member of the audit staff not as a CPA, you were
 16 like a clerk?
 17 A. I wasn't a clerk. I was a staff auditor.
 18 Q. You weren't a CPA?
 19 A. No.
 20 Q. That's the sole extent of your experience with
 21 practical accounting?
 22 A. Well, we discussed what I currently do. And my --
 23 Q. You're a teacher. I am talking about your
 24 profession as a practicing accountant?
 25 A. As practicing accountant, yes.

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6654

1 Q. You are a professor at practice, with no
 2 experience in the practice of accounting?
 3 A. Some experience.
 4 Q. The limited experience you described thirty years
 5 ago?
 6 A. Yes.
 7 Q. You mentioned some peer reviewed publications.
 8 Describe for me -- what year was the Journal of Legal
 9 Economics publication?
 10 A. 2002, I believe.
 11 Q. 2002. What year was the Journal of Business
 12 Valuation article?
 13 A. I believe -- there were two. So, I'm trying to do
 14 my CV from memory. But, I would say 2007 and 2009 or ten.
 15 Somewhere in there.
 16 Q. So, in the last ten years, it's fair to say you
 17 haven't published anything, in a peer review journal or
 18 otherwise, that relates to personal financial statement or
 19 compilations, correct?
 20 A. Personal financial statements and compilations?
 21 Yes, correct.
 22 Q. Your last two publications -- I believe you made
 23 reference to this, maybe it is the last three, I have two,
 24 one from 2021 -- that relates to understanding taxpayer
 25 identification numbers; is that correct?

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6655

1 A. Uh-huh.
 2 Q. And the summer of 2021; is that correct; sound
 3 about right?
 4 A. Yeah, there are two in there; one of them is
 5 effectively representing low income taxpayers and the other
 6 is understanding alternate tax ID numbers.
 7 Q. Representing low income taxpayers has nothing to
 8 do with the issues in this case, correct?
 9 A. That's correct.
 10 Q. Tell me, again, what, exactly, is a Professor of
 11 Practice? Explain that to me.
 12 A. So Cornell has three different tracks for faculty;
 13 they have research track faculty, who have a lower teaching
 14 load and a very high requirement for producing academic
 15 research.
 16 They have the track that I am on, which is the
 17 Professor of Practice track. And that has a higher teaching
 18 load. It does not carry a research requirement but, it
 19 carries a requirement to stay current with professional
 20 standards, with current practice.
 21 Because it's the job of those of us who are in the
 22 Professor of Practice role to prepare our students, our
 23 graduates, to go out and do CPA work, to work in private and
 24 public practice.
 25 The third track that Cornell has is what is

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6656

1 referred to as the lecturer track. Each of those has ranks.
 2 I hold the rank of professor which is the highest of those
 3 in the Professor of Practice track.
 4 Q. Do I have it correct that your role as a Professor
 5 of Practice is not to prepare students to go out into the
 6 world and become CPAs?
 7 A. That's what it.
 8 Q. Even though you have no experience at all
 9 practicing accounting?
 10 A. We've discussed some experience.
 11 Q. The time isn't on the staffer.
 12 So how does your experience --
 13 Are you familiar with Professor Godwin
 14 G-O-D-W-I-N?
 15 A. Yes.
 16 Q. He holds a Ph.D in accounting, a Master's and
 17 Bachelor's Degree in accounting and he worked, extensively,
 18 for a national public accounting firm.
 19 He is a Professor of Practice, right?
 20 A. Yes.
 21 Q. Would you consider yourself more or less qualified
 22 to teach students, to prepare students, to go out into the
 23 world and become CPAs then Professor Godwin?
 24 MR. WALLACE: Objection, relevance.
 25 MR. KISE: It is his qualification.

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1 THE COURT: Sustained. It is not a question
2 of whether he's more or less qualified than someone
3 else. It is a question of whether he is qualified.
4 MR. KISE: Your Honor, we're trying to
5 establish a benchmark and explain for the record and
6 for the Court, hopefully, the differences.
7 The government has proffered this individual
8 as an expert. He's just told you that despite the fact
9 that he only has what appear to be days --
10 I, probably, have more experience in the
11 practice of accounting than this witness. I suppose I
12 should qualify myself as an expert.
13 But this witness has limited experience.
14 He's described it for you. And I'm trying to establish
15 some foundation, some benchmark as to what Cornell
16 believes prepares students to go out into the world to
17 practice CPA.
18 So if his got qualifications -- if his
19 qualifications are sufficient, he can recite them. If
20 they're not they are not. I'm just trying to come up
21 with some benchmark.
22 MR. WALLACE: Mr. Kise could ask
23 factual-based questions without being rude. And he
24 also -- I don't know why he's asking him to compare to
25 other faculty members on different staffs.

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1 This isn't necessary for qualification. I
2 don't see how any of this is relevant to whether this
3 witness has information, has knowledge and experience
4 that is useful to the Court.
5 THE COURT: I'm only ruling on the
6 objection. The question was, basically, how does his
7 experience compare to another professor -- Godwin or
8 something -- at Cornell.
9 I am sustaining the objection. The question
10 isn't whether he is more or less qualified than someone
11 else. The question is whether he is qualified.
12 Q. Are you equally qualified, as Professor Godwin, to
13 prepare students to go out into the world and practice
14 accounting?
15 MR. WALLACE: Objection. We're not offering
16 him as an expert to go -- objection. Sorry.
17 MR. KISE: The government is offering him.
18 And they have touted the fact that this individual is a
19 Professor of Practice. And they are parading that all
20 around the courtroom that he's a Professor of Practice.
21 I'm trying to get to the point that he really
22 doesn't have to the qualifications even as a Professor
23 of Practice within his own school. He's not there.
24 We need to have some comparison here to
25 demonstrate that this individual doesn't possess the

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1 requisite skills, knowledge and training.
2 He may be a fine administer. It sounds like,
3 from his testimony, that's, exactly, what he is, is he
4 administrators the program and does a great job. And
5 he teaches some courses that we'll get to.
6 But, we need to have some benchmark to
7 understand whether or not he's qualified to even have
8 that title as Professor of Practice so the Court
9 understands what his qualifications, actually, are.
10 THE COURT: Perhaps Professor Godwin has 40
11 years of accounting experience. That's not relevant.
12 Objection, sustained. Let's move on.
13 And please, stop making speeches every time
14 we have to discuss something.
15 MR. KISE: Your Honor, I am not making
16 speeches. I'm trying to point out, for the record, the
17 point we're trying to make. The government has paraded
18 this individual in here as an expert and --
19 THE COURT: This is a speech.
20 MR. KISE: We, obviously, disagree.
21 THE COURT: Proving my point.
22 MR. KISE: We, obviously, disagree.
23 Q. How, if at all, does your experience differ from
24 Professor Libby at the --
25 MR. WALLACE: Objection.

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6660

1 MR. KISE: I'm trying to understand how his
2 experience differs. I didn't ask him to compare
3 himself.
4 Q. I'm trying to understand how your experience
5 differs, at all, from Professor Libby's.
6 THE COURT: Objection sustained.
7 MR. WALLACE: Mr. Kise is now questioning
8 the witness. He's not sitting at the table giving
9 speeches. This is -- every objection gets answered
10 with an extensive speech. It is inappropriate.
11 MR. KISE: I'm not sure what it has to do
12 with me sitting there or coming over here. You had the
13 same objection over there. I don't know if that
14 changes my physical locus.
15 VOIR DIRE
16 BY MR. KISE:
17 Q. Have you published any books in accounting like
18 this book?
19 A. No.
20 Q. You used this book in your course materials,
21 though, yes?
22 A. Which book do you have?
23 Q. The Libby book on financial accounting.
24 A. I have used it.
25 Q. This is your colleague, Professor Libby, correct?

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ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS December 12, 2023

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6661

1 A. Yes.

2 Q. You've used that book?

3 A. I have.

4 Q. What are you teaching right now? I understand

5 that you are planning to teach an on-line course in

6 managerial accounting in Winter 2024; is that correct?

7 A. I do that every winter term.

8 Q. Describe, for the Court, how, if at all, that

9 relates to the issues in this litigation; managerial

10 accounting.

11 A. That course, specifically, doesn't. The courses I

12 just concluded, in the Fall term, certainly do.

13 Q. Okay. Is that the course you mentioned, the

14 module, that has a module or partnerships?

15 A. Advanced financial accounting.

16 Q. I believe your testimony was there was a

17 mini-pieces on ASC 274, correct?

18 A. It has a section on it.

19 THE COURT: Slow down.

20 MR. KISE: I'm trying to get us out of here.

21 THE COURT: Well, the reporter has to take

22 it down whether you want to get out of here or not.

23 Q. I believe your testimony was that it has a

24 mini-piece of ASC 274, correct?

25 A. Correct.

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6662

1 Q. In the fall term, I looked at several of your

2 course offerings. And what I have come up with are cost

3 accounting and management control, in the Fall 2021, systems

4 in analytics and accounting in the Spring of 2021, cost

5 accounting and management control in the Fall term of 2020,

6 managerial accounting in the Spring term of 2020, managerial

7 reporting in the Fall term of 2019, managerial accounting in

8 the spring of 2019.

9 I mean, I'm just going back through your course

10 offerings. It seems that that's more of your focus. Is

11 that fair to say; the cost accounting and management

12 controls are more --

13 A. You have missed a few in there. Those are some of

14 the courses I teach.

15 Q. Which ones did I miss?

16 A. Systems and analytics courses that I teach.

17 Q. Sorry. Systems and analytics accounting?

18 A. Yes.

19 Q. How, if at all, does that relate to -- it says

20 here that the topics include big data, data visualization,

21 optimization tools, block chain and AI.

22 Maybe it's me, I am confused. How does that

23 relate to the issue in this litigation.

24 A. Those are all applied in an accounting context to

25 prepare students, who are going out into practice, for the

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6663

1 things that they will encounter in an accounting context

2 with regard to those technologies and topics.

3 Q. I mean, that's all lovely. But, what does it have

4 to do with the issues in this case, from your understanding,

5 about personal financial statements, compilation reports?

6 A. The advance financial accounting course would have

7 more of that. Within the systems course, we discuss the

8 types of analytics that are performed in different levels of

9 service because, it is an accounting course. So that's

10 built into the discussions.

11 Q. So maybe -- would you call it, sort of, a drive by

12 associated with the issues; a tangential relationship to the

13 issues in this case?

14 A. Yes, it's one of the things we discussed.

15 Q. That course we keep coming back to, that's the one

16 with the module on partnerships, correct?

17 A. Correct.

18 Q. The mini-piece. All right.

19 So, let me ask you, I didn't quite catch it.

20 At the Albany Academy, where you're on the Board

21 of this school, did you say an \$18 million budget or \$18

22 billion budget?

23 A. No, I wish; 18 million.

24 Q. 18 million. Okay. How, if at all, does that

25 experience compare with the multibillion dollar -- analyzing

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6664

1 the financial statements of a multibillion dollar

2 international real estate empire?

3 MR. WALLACE: Objection. Does this go to

4 qualification?

5 MR. KISE: Yes. How does it qualify him to

6 render opinions in that industry?

7 MR. WALLACE: My objections are to the

8 Court. I'm not asking Mr. Kise to answer a question.

9 THE COURT: Sorry. I lost the train of

10 thought.

11 MR. WALLACE: Mr. Kise is responding to me.

12 I am saying my objections are to the Court. We're

13 supposed to address the Court.

14 MR. KISE: I did address the Court. I'm

15 just standing here next to you, so you feel more close

16 to me. Maybe I should sit over there.

17 Do we need a read back?

18 THE COURT: Is there --

19 MR. KISE: I think there was a question.

20 THE COURT: Was there an objection to

21 question?

22 MR. WALLACE: How is it going to

23 qualifications at this point?

24 THE COURT: What was the question?

25 MR. KISE: Right. We'll need a read back.

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ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS December 12, 2023

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6665

1 THE COURT: Read back, please.
 2 MR. KISE: I can rephrase it so we can move.
 3 Q. How, if at all, sir, does your experience, on the
 4 Board of the private school of Albany Academy, render you
 5 qualified to opine about matters relative to the personal
 6 financial statements and compilations associated with a
 7 multibillion dollar international real estate corporation?
 8 A. So I deal with the same accounting issues. Many
 9 accounting issues, like, say audits are audits; whether they
 10 are the audits of a very small entity or the audits of a
 11 more extensive one. A lot of it is scaling. And
 12 understanding those issues is important.
 13 The audit is that top level of service that an
 14 accounting firm offers, in terms of assurance, in
 15 compilations are at the bottom.
 16 Q. You don't perform any audits?
 17 A. I do not.
 18 Q. You haven't since 30 years ago when you were an
 19 audit staff, correct?
 20 A. That's correct.
 21 Q. I'm not sure you answered my question.
 22 How does your service -- strike that.
 23 Is it your position that anyone with any
 24 background in accounting is qualified to render opinions in
 25 a case like this; involving a multinational, multibillion

E. Lewis - by Plaintiff - Voir Dire (Mr. Kise) Page 6667

1 CROSS-EXAMINATION
 2 BY MR. KISE:
 3 THE COURT: You're completely misinterpreting,
 4 mischaracterizing. He had a very, very varied career.
 5 Witness, would you agree? You have done a lot of
 6 different things?
 7 THE WITNESS: I agree.
 8 THE COURT: Mr. Kise, please don't ask him as to
 9 each thing he did. How does that help you? I'm no assuming
 10 that everything he did qualifies him as an expert. He
 11 answered your question. The -- but I'm not allowing -- is
 12 it your position that anybody that knows anything about
 13 accounting can be deemed an expert. That's a question for a
 14 judge. Not for a witness.
 15 MR. KISE: Okay, Your Honor. What I am trying to
 16 get to is not whether every piece of his background
 17 qualifies him as an expert. I'm trying to find out whether
 18 any piece. See, we're on the same page for once, last day
 19 of trial, maybe. We are on the same page. Any aspect of
 20 his background. So far, the only thing I've heard --
 21 THE COURT: I don't need a speech.
 22 MR. KISE: Any piece.
 23 THE COURT: Let me suggest this. Finish the voir
 24 dire. Ask him questions, then you can make a speech.
 25 MR. KISE: Okay.

Lewis - Plaintiff - Voir Dire/Mr.Kise Page 6666

1 dollar real estate empire?
 2 As long as you have some walking around
 3 understanding of accounting, that's sufficient for you to be
 4 an expert in your opinion?
 5 MR. WALLACE: Objection. We're not asking
 6 this witness to opine on his own qualification.
 7 MR. KISE: Yes.
 8 THE COURT: Objection sustained. It's a
 9 silly question.
 10 MR. KISE: It is not a silly question. Does
 11 he believe himself qualified? I am trying to explore
 12 the limits of his qualification in his own mind.
 13 If this witness just testified that his
 14 service on the board of a private school with
 15 \$18 million budget --
 16 THE COURT: You are completely
 17 misinterpreting, mischaracterizes.
 18 (Whereupon, the following proceedings were
 19 stenographically recorded Shameeka Harris.)
 20
 21
 22
 23
 24
 25

E. Lewis - by Plaintiff - Voir Dire (Mr. Kise) Page 6668

1 Q So the master of professional studies program you
 2 mentioned that. That's a ten-month program, correct?
 3 A It is a one year program, yeah.
 4 Q Ten months? With four modules in ten months?
 5 A Yes.
 6 Q It's for nonbusiness majors?
 7 A No, it is -- the master of professional studies in
 8 management, yes. It's for students who majored in something
 9 other than business and then want a graduate business degree.
 10 Q And is that program designed for a focus on accounting?
 11 A No.
 12 Q Okay.
 13 MR. KISE: Just give me one minute, Your Honor.
 14 I'm making sure I covered all of these.
 15 THE COURT: Sure.
 16 MR. KISE: Nothing further, Your Honor. Thank you.
 17 We can give the speeches tomorrow morning, perhaps, or do
 18 you want them tonight?
 19 MR. WALLACE: Your Honor, we renew our request to
 20 qualify Professor Lewis as an expert in the field of
 21 accounting.
 22 THE COURT: I don't see the need for a speech,
 23 Mr. Kise. Do you want two minutes or something, go ahead.
 24 MR. KISE: I will do less than two minutes, Your
 25 Honor. Again, the witness placed on his own testimony the

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ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS December 12, 2023

E. Lewis - by Plaintiff - Voir Dire (Mr. Kise) Page 6669

1 only thing he identified that he is even remotely relevant
 2 in his experience to testify as an expert in this case, I
 3 mean, I am sure that he does a wonderful job for Cornell in
 4 the areas that he teaches and practices in. That's not the
 5 question. The question is whether he's qualified to render
 6 opinions in a case of this nature with these issues. And
 7 the on thing in his background, the only thing he has
 8 mentioned is one module in a course that he teaches on a
 9 rotational basis which, in his own words, contain, quote, a
 10 mini piece on ASC 274. The rest of his experience is broad
 11 but irrelevant in the accounting sense, and it is no
 12 different than a general surgeon coming in to provide the
 13 Court testimony upon plastic surgery. They cut me off that
 14 might be a reason.

15 So, Your Honor, his qualifications, while they may,
 16 again, render him qualified in a different accounting
 17 context, in this case, they've -- the Government has
 18 identified absolutely nothing. In the last ten years, he
 19 has no publications. His service on the board of a private
 20 school, while admirable, is irrelevant and immaterial to his
 21 qualifications here.

22 The journals that he's mentioned that are peer
 23 review journals, although we can locate no citations to his
 24 publication, are from more than a decade ago. Anything that
 25 he's published recently, peer review or otherwise, relates

E. Lewis - by Plaintiff - Voir Dire (Mr. Kise) Page 6671

1 if it seems that this particular -- the witness's particular
 2 expertise in accounting would not cover that and, obviously,
 3 I'll give whatever weight I want to give to his opinions.
 4 So I think --

5 MR. KISE: Your Honor, just one point for the
 6 record, this is precisely my point, cost accounting is a
 7 completely different field. So you're saying he is teaching
 8 courses in accounting, yes. He may be great at cost
 9 accounting. I took cost accounting. I hated cost
 10 accounting. It has nothing to do with personal financial
 11 statements. It has everything to do with how management,
 12 cost factors. It is accounting but it is no different. At
 13 all events, you deemed him qualified over our objection and
 14 we'll -- we will take it up on question by question basis as
 15 you direct.

16 MR. WALLACE: I am just going to say I really hope
 17 we don't have question by question because we just heard
 18 from days from a professor at NYU who says NYU doesn't teach
 19 ASC 274. The issue is the field of accounting. Your Honor,
 20 I -- given the hour, should we start the substance of this
 21 testimony tomorrow morning.

22 THE COURT: Yes, at 10 o'clock.

23 MR. WALLACE: Thank you, Your Honor.

24 THE COURT: And I'll direct the witness, witness,
 25 witness don't discuss this case or your testimony or

E. Lewis - by Plaintiff - Voir Dire (Mr. Kise) Page 6670

1 to taxpayer identification numbers involving representations
 2 of low income taxpayers. Again, while that's admirable, it
 3 is completely irrelevant and immaterial to the issues in
 4 case and it does not render him even remotely qualified.

5 It is as if saying, as I mentioned before, because
 6 I have an accounting degree that I obtained 30 years ago,
 7 four years ago now, that I am somehow qualified to render
 8 opinions in this case. It's beyond absurd that the
 9 Government would proffer this witness when right at Cornell
 10 they have Professor Livy (Phonetic) who would be arguably
 11 qualified sitting in the office right next to this
 12 individual.

13 So, the reason clearly that they brought this
 14 witness in here is because there's not anyone in the actual
 15 recognized profession that would come in and sustain the
 16 opinions that they're asking of the witness. So he is not
 17 qualified and his -- it does have nothing to do with, A, the
 18 trier of fact.

19 THE COURT: Mr. Kise, in your case, accountings law
 20 was laws game so you've probably made the right career
 21 choice. Mr. Kise, you're asking him about all of these
 22 courses, managerial accounting. I don't know, whatever else
 23 accounting, everything but something accounting. It sounds
 24 like accounting to me. I hereby deemed him an expert but,
 25 obviously, the defendants can object to particular questions

E. Lewis - by Plaintiff - Voir Dire (Mr. Kise) Page 6672

1 anything related to it overnight because you are still a
 2 witness.

3 (Whereupon, the witness was excused from the
 4 stand.)

5 (Whereupon, the trial is adjourned until Wednesday,
 6 December 13, 2023, at 10 o'clock a.m.)

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ELI BARTOV, KEVIN SNEDDON & ERIC LEWIS December 12, 2023

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		8 (1)	

In The Matter Of:
People of The State of New York v.
Donald J. Trump, Et. Al.

Professor Eric Lewis
December 13, 2023

Supreme Court State of New York - Civil Term
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New York, New York 10007
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 2 COUNTY OF NEW YORK - CIVIL TERM - PART 37
 3 -----X
 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 5 JAMES, ATTORNEY GENERAL OF THE STATE OF
 6 NEW YORK,
 7
 8 Plaintiff,
 9
 10 -against- Index No.
 11 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC
 13 TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG;
 14 JEFFREY McCONNAY; THE DONALD J. TRUMP
 15 REVOCABLE TRUST; THE TRUMP ORGANIZATION,
 16 INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS
 17 MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC;
 18 401 NORTH WABASH VENTURE, LLC; TRUMP OLD
 19 POST OFFICE, LLC; 40 WALL STREET, LLC; and
 20 seven SPRINGS, LLC,
 21
 22 Defendants.
 23
 24 TRIAL 60 Centre Street
 25 New York, New York
 December 13, 2023

B E F O R E:

HONORABLE ARTHUR F. ENGORON,
 Supreme Court Justice

A P P E A R A N C E S:

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 SHERIEF GABER, ESQ.
 ALEX FINKELSTEIN, ESQ.

(Whereupon, appearances continued on the following page.)

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E.Lewis - Plaintiff - Direct/Mr.Wallace

1 COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cellphones are on silent. Laptops and
 4 cellphones will be permitted but, only to members of
 5 the press. There is, absolutely, no recording or
 6 photography, of any kind, allowed in the courtroom.
 7 Now, be seated and come to order.
 8 THE COURT: You know, we have oral arguments
 9 scheduled for January 11th. But in a strange way,
 10 I'm going to miss this trial. It's been an experience.
 11 Quick front bar with all the attorneys.
 12 (Discussion held at the bench, off the
 13 record.)
 14 (The discussion off the record concluded, and
 15 the following occurred in open court:)
 16 THE COURT: Let's get Mr. Lewis back our
 17 current witness.
 18 MR. WALLACE: May I proceed, your Honor?
 19 THE COURT: Please.
 20 DIRECT EXAMINATION
 21 BY MR. WALLACE:
 22 Q. Professor Lewis, I am going to hand you a copy of
 23 a document that's been marked as Plaintiff's Exhibit 1778.
 24 Professor Lewis, do you recognize this document?
 25 A. I do.

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1
 2 Cont'd Appearances
 3
 4
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 6 Attorneys For the Defendant
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 8 Tallahassee, Florida
 9 BY: CHRISTOPHER KISE, ESQ.
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CHERYL-LEE LORIENT
 SHAMEEKA HARRIS
 SENIOR COURT REPORTERS

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E.Lewis - Plaintiff - Direct/Mr.Wallace

1 Q. What is it?
 2 A. It is my initial expert report.
 3 Q. If I could direct you to turn to page 72 of 92,
 4 this is Appendix A. If you flip behind it, can you describe
 5 for me what is being shown in this appendix?
 6 A. This is a list of documents I relied upon to
 7 produce the report.
 8 Q. What kind of documents did you review in preparing
 9 your report?
 10 A. So, some deposition documents, examinations under
 11 oath, the original pleading, expert reports of other
 12 experts; valuation experts, publication by AICPA, FASB and
 13 then some documents that are either support papers or
 14 support papers with some Mazars markings on them which, I
 15 guess, makes them some work papers.
 16 Q. Those are the items listed under the discovery
 17 documents; is that correct?
 18 A. Yes.
 19 Q. In addition to the materials listed here as being
 20 relied upon in your report, did you review any other
 21 materials in the course of doing your work on this report?
 22 A. On this report, I don't think so. There may have
 23 been a couple of other supporting documents but, because
 24 they are not named here it is hard to know what those are.
 25 Q. You can put that document aside.

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6677

1 I'm going to hand you a document that has been
 2 marked as Plaintiff's Exhibit 1783.
 3 Professor Lewis, do you recognize this document?
 4 A. I do, yes.
 5 Q. What is this?
 6 A. This is my rebuttal report.
 7 Q. And what were you rebutting in this report?
 8 A. I was rebutting the reports of Eli Bartov --
 9 Professor Bartov, Frederick Chin and Jason Flemmons.
 10 Q. If you could flip to page 15 of 21 in this
 11 document that's is Appendix A. If you flip over to the next
 12 page, can you describe for me what is being shown in this
 13 appendix?
 14 A. So, this is a listing of some additional documents
 15 that I relied upon for the rebuttal report.
 16 Q. What sorts of documents did you review in
 17 preparing your rebuttal report?
 18 A. The expert reports of the three I just mentioned
 19 and some additional FASB backups. And then, really, a
 20 review of some sections of an AR code written by AICPA.
 21 Q. So during the course of expert discovery in this
 22 action, did you come to review any other materials relevant
 23 to your opinions?
 24 A. Post rebuttal reports?
 25 Q. Post rebuttal reports but, during the course of

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6678

1 expert discovery.
 2 A. I believe -- the depositions were in the original
 3 document.
 4 Q. They are not listed but, were there depositions
 5 that you reviewed?
 6 A. Yes.
 7 Q. What depositions did you review?
 8 A. Donald Binder, Jason Flemmons, Frederick Chin, Eli
 9 Bartov. A few others. But, there was -- there were
 10 depositions and then there were trial transcripts. So, that
 11 was kind of a combination.
 12 Q. We'll get to those in a moment.
 13 A. Probably Weisselberg. I don't know if that was a
 14 deposition or a --
 15 Q. Do you remember reading testimony from
 16 Mr. Weisselberg?
 17 A. I do.
 18 Q. Did you review the summary judgments in this
 19 action?
 20 A. I did.
 21 Q. Have you reviewed materials from the trial record
 22 in this action?
 23 A. Yes.
 24 Q. What materials, from the trial record in this
 25 action, did you review?

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6679

1 A. City trial transcript from testimony.
 2 Q. From what witness do you recall you reviewed trial
 3 transcripts?
 4 A. I recall Mr. Weisselberg, McConney, Birney,
 5 Hawthorn, Haigh, of course, Flemmons, Chin, day one of
 6 Bartov. Those are the ones that come to mind.
 7 Q. You were also in the audience for the second day
 8 of Mr. Bartov's testimony?
 9 A. Third day. I think I missed day two in there.
 10 Q. I would like to focus, primarily, on the testimony
 11 of Mr. Flemmons today.
 12 Professor Lewis, did you review Mr. Flemmons
 13 testimony concerning ASC 274?
 14 A. I did.
 15 Q. Just to reorient us, very briefly, what is ASC
 16 274?
 17 A. ASC 274 is the portion of the -- ASC is Accounting
 18 Standard Codification. It's the portion of the accounting
 19 standards produced by the FASB that governs and determines
 20 how personal financial statements are presented.
 21 Q. I'm going to hand you a copy of a document that's
 22 already in evidence.
 23 MR. WALLACE: Just for ease of reference,
 24 this is a document that has been marked as Plaintiff's
 25 Exhibit 1609.

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6680

1 Q. Professor Lewis, do you recognize this document?
 2 A. Yes. This appears to be, at least -- I would have
 3 to look through it but -- ASC 274.
 4 Q. If you want to take a minute, feel free to flip
 5 through it.
 6 A. Yeah. Yes, this is ASC 274 in written -- in
 7 printed form.
 8 Q. If I could direct your attention to page 2 of 21
 9 in this document, under the heading "Basis of presentation
 10 of personal financial statements" -- actually, let me stop
 11 there for a moment.
 12 What is a basis of presentation?
 13 A. It's really quite like it sounds. It determines
 14 how -- in this case, elements within the Statement of
 15 Financial Condition are going to be presented. It gives a
 16 description of the definition that's going to be used.
 17 Q. And, where is the basis of presentation for
 18 personal financial statements to be found in this document?
 19 A. This is --
 20 MR. KISE: Objection, your Honor. We have
 21 now gone from just background and context of his
 22 generally view to matters which, clearly, could and
 23 should have been presented in their direct case.
 24 This is going through the standards of ASC
 25 274, how they apply, what they are. There's no reason

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6681

1 that this should be presented on rebuttal.
 2 MR. WALLACE: Yes, there is.
 3 MR. KISE: This witness shouldn't be allowed
 4 to testify about general items with respect to the
 5 standards. If he's rebutting something specific, let
 6 him rebut something specific.
 7 As you know, we don't think that any of his
 8 testimony should be admissible on rebuttal. But,
 9 certainly, here we're now getting into sort of -- as
 10 the witness just did -- narrative on "What the standard
 11 is." And the next question is going to be "How does
 12 this work." The questions asked. So none of this is
 13 proper rebuttal. And, we would object to it.
 14 THE COURT: Overruled without prejudice. I
 15 am waiting to see where it goes at this point.
 16 MR. WALLACE: Do I need to explain then.
 17 Because, there is a broader explanation. We didn't put
 18 in any evidence of ASC 274. The defendants did. And
 19 this witness is responding to that.
 20 MR. KISE: Your Honor, that's exactly the
 21 point. They had the obligation to introduce that
 22 evidence as part of their case and chief. That's the
 23 governing standard.
 24 And if they wanted to demonstrate that they
 25 had proven therapy case in accordance with the

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6682

1 governing standard, then they should have done that in
 2 their case.
 3 They can't wait -- back to the Court of
 4 Appeals cases. They can't lay and wait and see what we
 5 do and then respond to it.
 6 Just because the evidence is contradictory to
 7 our evidence doesn't make it rebuttal evidence. It's
 8 still evidence that was necessary to be presented in
 9 their case and chief. Because, that is the governing
 10 standard as they admit -- freely admit as this witness
 11 testified. This is the standard that applies.
 12 As part of their prima facie case, they would
 13 need to establish that we violated this standard in
 14 some shape, form or fashion.
 15 If they didn't do it in their prima facie
 16 case, it's too late to bring in a witness to say, now,
 17 that we violated it. They would have had to have done
 18 that in the prima facie case.
 19 THE COURT: If they had to do that in the
 20 prima facia case or "prima facia case" and they didn't
 21 and you moved for a directed verdict then, I should
 22 have granted it. But I didn't because, I didn't think
 23 they had to.
 24 Now, commonsense tells me that if you bring
 25 in something in defense case that they haven't

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6683

1 mentioned, they have the right to rebut it. That's
 2 what a rebuttal witness is. So, overruled.
 3 Mr. Wallace if you want to --
 4 MR. WALLACE: I will just proceed with my
 5 exam, your Honor, if that's okay.
 6 Q. Mr. Lewis, I believe the question that was
 7 pending, prior to the objection was, "and, where is the
 8 basis of presentation for personal financial statements to
 9 be found in the document?"
 10 A. So, you will see it there underlined and
 11 highlighted, not by me or you, but by the FASB in
 12 274-10-05-2.
 13 Q. The underlined highlighted language you are
 14 referring to is?
 15 A. Estimated current value.
 16 Q. Can you read the sentence that includes that
 17 highlighting into the record?
 18 A. The primary focus of personal financial statements
 19 is a person's assets and liabilities. The primary users of
 20 personal financial statements normally consider estimated to
 21 current value information to be more relevant for their
 22 decisions than historical cost information.
 23 Q. Professor Lewis, I'm going to direct your
 24 attention to Exhibit 1715 which is already in evidence. I
 25 don't know that you are going to need to have a copy of it

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6684

1 though. If we could turn to page two. Is this the links
 2 definition of estimated current value you were referring to
 3 in the passage you just read?
 4 A. Yes. In the codification -- the digitized
 5 codification that was --
 6 THE COURT: It was "yes" or "no," question.
 7 The answer was yes.
 8 A. Sorry.
 9 Q. And so, could you tell us, could you provide for
 10 the record, what is the definition of estimated current
 11 value?
 12 A. Should I read it?
 13 Q. Sure.
 14 A. For an asset, the amount at which the item could
 15 be exchanged between a buyer and seller each of whom is
 16 well-informed and willing and neither of whom is compelled
 17 to buy or sell.
 18 Q. Could you explain for us, in your own words, what
 19 estimated current value means in connection with the
 20 preparation of a personal financial statement?
 21 A. So --
 22 MR. KISE: Objection. In his own words or
 23 the words on the page or in conjunction with the
 24 authoritative guidance that's included in the ASC 274?
 25 THE COURT: You want it in his own words?

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6685

1 MR. WALLACE: Correct. That was the
2 question.
3 THE COURT: Okay. I'll allow it. I am still
4 waiting for how this is a rebuttal. Obviously, I will
5 give you some leeway.
6 One way to approach this, I would think,
7 would be to tell us all what you're rebutting and then
8 rebut it. But I will allow you, again, some leeway.
9 MR. WALLACE: Fair enough, your Honor. I
10 will get there momentarily.
11 Q. So, again, could I ask, Professor Lewis, in your
12 own words, what is --
13 MR. KISE: Just to be clear, your Honor,
14 just on that last point, we have a standing objection
15 as to this entire line of questioning with respect to
16 it being improper rebuttal. Just so I don't have to
17 keep interrupting because, I know that bothers
18 Mr. Wallace.
19 THE COURT: I hope the rest of your staff
20 takes note of the idea of a standing objection. I have
21 been sort of holding back on this one but, the redirect
22 of Bartov, I believe, arguably, opened the door to all
23 sorts of rebuttal. So we'll keep that for what it's
24 worth.
25 Continue.

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6686

1 MR. WALLACE: I will try to move through
2 this, expeditiously, your Honor.
3 Q. Professor Lewis, could you please explain for us,
4 in your own words, what estimated current value means in
5 connection with the preparation of a personal financial
6 statement?
7 A. So estimated current value is -- because it's the
8 basis for presentation, it's the top of the hierarchy of
9 this standard.
10 So any candidate quantitative result for estimated
11 current value needs to be measured against this definition.
12 FASB created this rational measure against which any
13 quantitative result can be then measured as a final step to
14 determine whether, in fact, an estimated current value has
15 been arrived at.
16 MR. KISE: Objection, Your Honor. This is
17 clearly now the province of their direct case. This
18 is, exactly, their theory. This has been their theory
19 all along. You heard it from prior to summary
20 judgment.
21 Now they're coming in, for the first time, on
22 rebuttal and introducing a witness to support the core
23 theory in their case.
24 This is wholly improper -- wholly improper --
25 that they can bring in, on rebuttal, something that

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6687

1 they clearly had to have done in their case and chief;
2 irrespective of whether the defense introduced evidence
3 on it.
4 It doesn't matter whether we introduced
5 evidence on it. That doesn't open the door to rebuttal
6 because we introduced evidence on it.
7 Because we established our defense doesn't
8 forgive them for failing to carry their burden in the
9 first instance.
10 What this witness just testified to is their
11 core position. That is not rebuttal. That is their
12 core position.
13 There is no case law, of any kind, that
14 supports the introduction of this sort of testimony on
15 rebuttal.
16 THE COURT: I will rest on what I said
17 earlier, which I think summed it up very well if I say
18 so myself.
19 I do have a different objection of sorts, the
20 question was, "What does this mean in your own words?"
21 It's so clear. I must have learned it in accounting
22 101 in law school.
23 I think I've said, maybe once, I am so used
24 to cases where the objection is "the document speaks
25 for itself." Here, the document speaks for itself.

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6688

1 And, frankly, I didn't really get much out of that last
2 answer.
3 MR. WALLACE: Sure. And your Honor, I
4 appreciate that. And in fact, I'm taking the
5 criticism.
6 Some of this about the GAAP was undisputed on
7 summary judgment and is in the record. I am laying a
8 foundation for how Professor Lewis was going to
9 respond. I was, literally, about to get the testimony
10 from Mr. Flemmons that he is going to respond to.
11 THE COURT: Let's do it.
12 MR. WALLACE: I seem to be getting
13 interrupted quite frequently.
14 Q. Professor Lewis, as part of your view of
15 Mr. Flemmons' testimony about ASC 274, did you consider his
16 testimony concerning estimated current value?
17 A. I did.
18 Q. Professor Lewis, if we could put up on the screen
19 an excerpt of Mr. Flemmons' testimony that begins on page
20 4258 of the record. I am just going to use this to orient
21 you.
22 Mr. Flemmons is directed to page 13 of ASC 274.
23 Do you see that?
24 A. Yes, I do.
25 Q. If we look down, just a bit, on his answer that

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6689

1 begins on Line 15, he refers to the standards under
 2 paragraph 55-1A.
 3 Are you familiar with that section of ASC 274?
 4 A. I am.
 5 Q. Are you familiar with Mr. Flemmons' testimony
 6 concerning ASC 27410 sections 55?
 7 A. Yes.
 8 MR. WALLACE: If we could put up 1609 back
 9 on the screen.
 10 If we can go to page 13 of 21.
 11 Q. I'm going to just cut through and ask you, what is
 12 reflected in section 55-1?
 13 A. Section 55-1, as it's named there, is the
 14 implementation guidance. And it discusses methods that may
 15 be used to create candidates for estimated current value;
 16 candidate quantitative results.
 17 Q. And, what does it mean it's the implementation
 18 guidance of ASC 274?
 19 A. Here FASB has given some instruction as to
 20 allowable methods that can be used within the standard.
 21 Q. I believe you mentioned, in your prior response,
 22 there's a hierarchy.
 23 Can you explain what you meant that there's a
 24 hierarchy in responses.
 25 A. 551 isn't the end of the any analysis because, the

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6690

1 definition is important here. If you take a number that
 2 results from one of the methods described in 551, and then
 3 don't compare it to the definition, you've, effectively,
 4 written the definition out of the standard if you don't say,
 5 "I've arrived at a number. Does that number fit this
 6 definition of the willing buyer and willing seller of
 7 estimated current value."
 8 Failing to do that, you've said, "Hey, that
 9 definition isn't important. I just do one of these
 10 definitions and then I am done. And I take the number."
 11 When, in fact, the definition is part of the standard. In
 12 fact, it is the basis of presentation for the standard.
 13 MR. KISE: Your Honor, I move to strike that
 14 answer. That was not responsive. That was just his
 15 opinion. He didn't cite to anything in the guidance
 16 that speaks to hierarchy. The word "hierarchy" doesn't
 17 appear anywhere.
 18 This is just a Professor of Practice with no
 19 practical experience talking about how this is supposed
 20 to be done in the real world without any citation
 21 nothing. It's completely nonresponsive.
 22 MR. WALLACE: Your Honor --
 23 THE COURT: The definition of "estimated
 24 current value" speaks -- as I said before -- I believe
 25 it speaks for itself. We were going fast here.

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6691

1 I'm going to strike the answer as I don't
 2 understand it. So, without prejudice, I just didn't
 3 understand. You're trying to summarize or explain and
 4 didn't explain it for me.
 5 So, without -- I'll just deny without
 6 prejudice Mr. Kise's objection because, I am striking
 7 the answer. I don't understand it. And, I want to.
 8 Q. Professor Lewis, could you give us an example, a
 9 practical example, of how the hierarchy, that you referred
 10 to in your earlier answer and in the answer that was just
 11 struck, plays out in the real world?
 12 MR. KISE: Objection; foundation. This
 13 witness has no experience in the real world. He's
 14 testified to that. He has no experience in the real
 15 world. He's testified to it.
 16 MR. WALLACE: He's been qualified as an
 17 expert.
 18 MR. KISE: But not in the real world.
 19 MR. WALLACE: That is not what the Judge
 20 said.
 21 Your Honor, at this point, he's just
 22 disrupting the exam. He's saying the same things over
 23 and over again. This is out of order. This is
 24 ridiculous.
 25 MR. KISE: It is not out of order. If there

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6692

1 is a witness that has no experience, in the real world,
 2 on any of these issues, of any kind -- none, other than
 3 as a clerk back 30 years ago -- then he has no
 4 foundation to render the opinion. None.
 5 MR. WALLACE: You've been overruled on that.
 6 MR. KISE: I haven't been overruled on this
 7 question.
 8 THE COURT: Objection overruled. I'll take
 9 the answer for what its worth. I hope I understand it
 10 better this time.
 11 There is also a standing objection. I
 12 realize there is general standing objections and
 13 there's specific objections. But we understand you
 14 don't approve of this line of questioning but, I am
 15 allowing it.
 16 MR. WALLACE: Your Honor, I am just going to
 17 say, at this point, defendants spent four days going
 18 over, quite frankly, extremely repetitive testimony
 19 from their expert and we didn't disrupt and you allowed
 20 in.
 21 We would like to lay the foundation for what
 22 this witness has to say without interruptions from
 23 Mr. Kise on every instance. I've asked the witness --
 24 That wasn't an invitation for more speeches.
 25 MR. KISE: Your Honor, if the witness has a

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6693

1 proper foundation to support the question then, he can
 2 get it in. If he doesn't, he doesn't.
 3 THE COURT: You are making the same
 4 objection I just overruled. And please, Mr. Kise, try
 5 to keep the objections -- I know you have to do what
 6 you have to do. Try to keep them to a minimum so we
 7 don't break the flow.
 8 And, whether you agree with this or not I
 9 believe I gave a lot of leeway to your witnesses.
 10 Agree or disagree.
 11 MR. KISE: Do you really want me to answer?
 12 THE COURT: No. The record will speak for
 13 itself, right?
 14 Hopefully, without further interruption,
 15 Mr. Wallace continue.
 16 Q. Professor Lewis, do you have a real world example
 17 for how the hierarchy you describe works?
 18 A. It might be helpful to give a practical example
 19 that I think whether you have accounting expertise or you
 20 don't have accounting expertise you can understand.
 21 Let's say I have a Derek Jeter rookie baseball
 22 card from the 1990s, early or mid 90s, and it is part of my
 23 personal assets. So I need to establish an estimated
 24 current value.
 25 When I bought it, I bought it in a pack that

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1 included some bubble gum and some other cards. So if I look
 2 at the cost of that card, it might be ten cents. So the
 3 cost basis for my card is ten cents.
 4 But, I can look at recent sales of that Derek
 5 Jeter rookie card and see that depending on the card and
 6 condition it may be tens of thousands of dollar -- worth
 7 tens of thousands of dollars.
 8 And that's another one of these choices. So
 9 choice (c) would be, in 551, would be the cost, the
 10 historical cost; which I maybe adjust for inflation between
 11 1995, let's say, or six. And now, it might get up to a
 12 dollar.
 13 So, I got a dollar as my adjusted cost basis or
 14 I've got tens of thousands of dollars as my recent
 15 transactions, similar assets, similar situations. They
 16 can't both be the estimated current value. They're not
 17 equally valid as estimated current value.
 18 How do I figure out which one is the estimated
 19 current value or better? I put them both to the "willing
 20 buyer/willing seller test."
 21 I know because, I can look on-line and see what
 22 the card is selling for; where the willing buyers and
 23 willing sellers are exchanging.
 24 I wouldn't be willing to sell the card for a
 25 dollar. I'd get a lot of willing buyers at that price.

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1 But, I know where the willing buyers and willing sellers who
 2 are informed by the cards are.
 3 And that's why you have to take the method or
 4 methods. You can run as many methods as you would like.
 5 But, a result has to be compared to the definition in order
 6 for it to be an estimated current value. That's a practical
 7 example.
 8 Q. If we could put up trial transcript page 4276 and
 9 4277. Professor Lewis, I would like to direct your attention
 10 to an exchange with Mr. Flemmons that begins on 4276 of the
 11 trial transcript.
 12 This is at the end of an exchange, with the Court
 13 and then with counsel, about the potential magnitude of
 14 variations and valuation using the methods laid out in ACS
 15 274.
 16 Are you familiar with this testimony?
 17 A. Yes, I am.
 18 Q. If we could look at the section that begins on
 19 line one of 4277 there's a question.
 20 "So even though the values derived from the
 21 various methods are very different or could be very
 22 different, would using any one of these numbers comply with
 23 ASC 274?"
 24 "ANSWER: Yes.
 25 "QUESTION: And even though the values

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1 derived from the various methods could be very
 2 different, would using any one of the different numbers
 3 still comply with GAAP?
 4 "ANSWER: That's correct. ASC 274 is GAAP.
 5 So to the extent that GAAP is the selected convention
 6 to prepare values for personal financial statements,
 7 one would be complying with GAAP if using one of these
 8 methods."
 9 Q. Professor Lewis, do you agree with Mr. Flemmons'
 10 analysis?
 11 A. I do not. I agree ASC 274 is GAAP on this. But,
 12 based on -- the example that I just gave is a good example
 13 of why I don't agree that you can just use one of the
 14 methods. And then, you have an estimated current value when
 15 you are done.
 16 Q. So, describe in more detail what is the nature of
 17 your disagreement?
 18 A. I don't believe you are complying with GAAP just
 19 by using one of the methods.
 20 Q. What do you still need to do?
 21 A. You need to compare the result of that method back
 22 to the definition of estimated current value.
 23 Q. The definition you are referring to is the willing
 24 buyer/willing seller definition?
 25 A. That's correct.

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6697

1 Q. Does ASC -- let me ask -- let me cut through this.
 2 Who has, ultimate, responsibility for determining
 3 estimated current value?
 4 A. The issuer of the statement.
 5 Q. And, in the examples, you have seen, from this
 6 case, who is the issuer?
 7 A. Mr. Trump or the Trust depending on the year.
 8 Q. Who has ultimate responsibility for compliance
 9 with the standards in ACS 274?
 10 A. The issuer.
 11 Q. In this case, who is the issuer?
 12 A. Again, Mr. Trump or the Trust.
 13 Q. Okay. I think way can leave it there. If we could
 14 move away from the responsibilities of issuer and talk about
 15 the responsibilities of the accountant.
 16 Professor Lewis, did you review testimony from
 17 Mr. Flemmons concerning the obligations of an accountant in
 18 the course of the compilation engagement?
 19 A. I did.
 20 Q. Just to orient us, could you tell us what
 21 standards govern the work of an accountant in the
 22 performance of compilation engagement?
 23 A. These are standards produced by AICPA. The
 24 current standard is ARC 80. The standard that was in
 25 effect, from 2009 through 2015, was AR 80.

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6699

1 DIRECT EXAMINATION
 2 BY MR. WALLACE:
 3 Q Professor Lewis, this is another excerpt of
 4 Mr. Flemmons' testimony. I am going to direct your attention to
 5 an exchange that appears at the bottom of page 4381. There is a
 6 series of questions. They're withdrawn and then begin on line
 7 24.
 8 "QUESTION: What obligation would the accounting
 9 firm have in placing an asset value on the statement of
 10 financial condition based on the information that's been
 11 provided in the supporting data?
 12 "ANSWER: Well, the accounting firms's obligation
 13 is to understand the methods that are being used and
 14 consider the appropriateness of those methods, you know,
 15 based on the assets that are being valued and ultimately
 16 determine whether they are a GAAP compliance method. And to
 17 the extent they are not, the standards require them to
 18 perform followup inquires, perhaps, include language in
 19 their accountants's report if those amounts are reported in
 20 the manner that is inconsistent with GAAP."
 21 Do you agree with Mr. Flemmons' opinion here?
 22 MR. KISE: Objection, Your Honor. I just want to
 23 note for the record back to the general objection, on the
 24 specific obligation, here, specifically. Again, this is
 25 subject matter that was covered in their direct case with

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6698

1 Q. I believe Mr. Flemmons testified about this. But,
 2 are there any substantive differences between AR 80 and ARC
 3 80 that would affect the work performed by the accountants,
 4 at Mazars, in compiling Donald Trump's Statement of
 5 Financial Condition between 2011 and 2020?
 6 A. No.
 7 MR. WALLACE: If we could put up page 4381
 8 and 4382 of the trial transcript.
 9 (Whereupon, the following proceedings were
 10 stenographically recorded Shameeka Harris.)
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Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6700

1 Mr. Bender and I believe with Mr. Kelly.
 2 Certainly, if they had evidence to offer regarding
 3 the governing standards and the accounting firm's
 4 obligation, that must have been done on their case-in-chief.
 5 It is inappropriate rebuttal.
 6 THE COURT: Overruled. It's what your witness
 7 testified and they are trying to rebut it.
 8 MR. KISE: But, Your Honor, he testified in
 9 response to their case and they -- their case didn't include
 10 their expert by their own choice. They had Mr. Kelly talk
 11 about this. I believe they had Mr. Bender talk about this
 12 and so that evidence was there and Mr. Flemmons testified in
 13 response to their case. The fact that they chose not to
 14 call an expert in their case isn't the defenses' fault or
 15 problem. It's their fault.
 16 THE COURT: They did call an expert, correct?
 17 Mr. --
 18 MR. KISE: Not an accounting expert. They called
 19 McCarty. McCarty was the expert. Yes, alleged expert.
 20 THE COURT: Can anybody remember what Mr. McCarty
 21 was deemed an expert in?
 22 MR. WALLACE: Banking.
 23 MR. KISE: I believe it was banking, Your Honor. I
 24 don't think it was accounting. In all events, they should
 25 have called this accounting expert particularly on this

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6701

1 subject which was clearly covered in their case-in-chief.
 2 THE COURT: You are still making the same basic
 3 objection. It should have been in their direct case. I
 4 don't think it had to be. The law of the cases it didn't
 5 have to be. Let's move on. Objection overruled.
 6 MR. KISE: Can we get a read back of the question,
 7 please?
 8 MR. WALLACE: No, it was an objection to the answer
 9 so...
 10 CONT'D DIRECT EXAMINATION
 11 BY MR. WALLACE:
 12 Q You did not agree with Mr. Flemmons in this analysis?
 13 THE COURT: That's leading.
 14 Q To re-orient us to a question that was interrupted, do
 15 you agree with Mr. Flemmons' analysis?
 16 A There are a lot of pieces and opinions, lots of and's
 17 in there but in general I do not.
 18 Q Well, we can take it in the pieces. Why don't we start
 19 with the section you agreed that an accounting firm performing a
 20 compilation has an obligation to understand the methods that are
 21 being used?
 22 A Yes.
 23 Q What does it mean that they have that obligation?
 24 A It means that as part of a client acceptance process,
 25 the firm goes through, do we understand the framework that we're

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6702

1 being asked to engage and do we understand the methods that the
 2 client, the issuers are telling us that they are using to
 3 abide by, to comply with the framework. They have an obligation
 4 to do that.
 5 Q Okay. Move down. Do you agree that an accounting firm
 6 performing a compilation has an obligation to consider the
 7 appropriateness of the methods being used by the issuer?
 8 A Only to the extent that they are among the allowed
 9 methods.
 10 Q Looking next, do you agree that an accounting firm
 11 performing a compilation has a obligation to ultimately
 12 determine whether the methods being used by the issuer are a
 13 GAAP compliant method?
 14 A No.
 15 Q Why not?
 16 A Because GAAP compliance is the responsibility of the
 17 issuer.
 18 Q And is that responsibility spelled out anywhere in the
 19 performance standards?
 20 A It is.
 21 Q And where would you find this?
 22 A So, if ARC 80, there are two places where it is kind of
 23 right up front in that document. It is sections 2 and 4,
 24 paragraph 2 and 4.
 25 Q Can we pull up -- I have a spare copy. It is already

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6703

1 in evidence, Defendant's Exhibit 26.
 2 Professor Lewis, do you recognize this document?
 3 A Yes, this is ARC Section 80.
 4 Q And so what are the sections you're referring to?
 5 A These are paragraphs 2 and 4.
 6 Q And could you just read paragraph two into the record?
 7 A Sure.
 8 "Because a compilation engagement is not an assurance
 9 engagement, a compilation engagement does not require the
 10 accountant to verify the accuracy or completeness of the
 11 information provided by management or otherwise gather evidence
 12 to express an opinion or a conclusion on the financial
 13 statements."
 14 Q And what is the significance of that language?
 15 A This sets the foundation for the relationship between
 16 the issuer, the client and the accountants.
 17 Q I believe you said the other -- what was the other
 18 paragraph you --
 19 A Paragraph four.
 20 Q And that's under the heading objective?
 21 A It is.
 22 Q Could you read that into the record, please.
 23 A Yes. That's a long one but, yes.
 24 "The objective of the accountant in a compilation
 25 engagement is to apply accounting and financial reporting

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1 expertise to assist management in the presentation of financial
 2 statements and report, in accordance with this section, without
 3 undertaking to obtain or provide any assurance that there are no
 4 material modifications that should be made to the financial
 5 statements in order for them to be in accordance with the
 6 applicable financial reporting framework."
 7 Q And what is the impact of that language?
 8 A Again, that's reinforcing that the accountants are not
 9 in a compilation obligated by the these performance standards to
 10 determine whether the statements materially comply with GAAP.
 11 GAAP is the financial reporting framework here.
 12 Q If you could turn to page five of this document and
 13 this time I'll read this into the record. I just want to direct
 14 your attention to the heading, "The Accountant's Knowledge and
 15 Understanding of the Entities Financial Reporting Framework."
 16 It's item 12 and it states, "The accountant should obtain an
 17 understanding of the applicable financial reporting framework
 18 and the significant accounting policies intended to be used in
 19 the preparation of the financial statements."
 20 What is the significance of -- what does that paragraph
 21 mean?
 22 A So this reinforces what we read essentially in
 23 paragraph two. So it's saying here's what the accountants'
 24 responsibilities are. This is what they -- this is what they
 25 need to do.

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6705

1 Q And does anything in this paragraph affect the issuer's
 2 ultimate responsibility for the contents of the financial
 3 statement?
 4 A No.
 5 MR. KISE: Objection. Leading.
 6 THE COURT: Sustained.
 7 Q Does this paragraph have any affect on the issuer's
 8 responsibility for the contents of the financial statement?
 9 MR. KISE: Same objection. Leading.
 10 THE COURT: Sustained.
 11 Q How, if at all, does this paragraph have an affect on
 12 the issuer's ultimate responsibility for the contents of the
 13 financial statement?
 14 A It has no affect.
 15 THE COURT: That technique worked for Mr. Suarez.
 16 It can work for you too.
 17 MR. KISE: That's why I didn't object.
 18 Q If we look at the next section under the heading
 19 compilation procedures, there are four paragraphs number 13
 20 through 16. How if, in any way, does the guidance in this
 21 section affect the issuer's responsibility for the contents of
 22 the financial statement?
 23 A It does not change the issuer's responsibility. The
 24 entirety of ARC 80 is the accountants' responsibilities. The
 25 issuer responsibilities are not impacted by it.

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6706

1 Q What obligation do these compilation procedures impose
 2 on an accounting firm with respect to ensuring compliance with
 3 GAAP?
 4 A No responsibility for ensuring compliance with GAAP.
 5 That goes back to paragraph two.
 6 Q Are there any circumstances under which an accounting
 7 firm might need to address GAAP compliance in a compilation
 8 engagement?
 9 A Yes.
 10 Q And what would those circumstances be?
 11 A If while doing the compilation, not doing extra work or
 12 investigation, but during the compilation something comes to the
 13 attention of the accountants, they have that it could be a GAAP
 14 departure. It could be a problem. They have the responsibility
 15 to bring that issue to the issuer, to the client.
 16 Q What comfort, if any, should an issuer take from the
 17 fact that an accountant performing a compilation engagement did
 18 not identify a specific GAAP departure?
 19 A Absolutely none.
 20 Q What comfort, if any, should -- I'm sorry. Withdrawn.
 21 What comfort, if any, should the user of a financial
 22 statement take from the fact that an accountant performing a
 23 compilation engagement did not identify a specific GAAP
 24 departure?
 25 A Same. None.

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6707

1 Q If we could put up on the screen a demonstrative that
 2 has been marked defendant's demonstrative one and go to page
 3 two.
 4 Professor Lewis, do you recognize this document?
 5 A Yes.
 6 Q And do you understand what's being reflected on this
 7 chart?
 8 A Yes, I do.
 9 Q And what do you understand as being reflected on this
 10 chart?
 11 A On the vertical, the Y axis as it were, there is a
 12 level of assurance, what level of assurance is the accountant
 13 providing in the various levels of service that accountants can
 14 provide with regard to financial statements.
 15 Q I'll just ask do you know who prepared this chart?
 16 A I think this came from Mr. Flemmons' report.
 17 Q I want to ask you about the three boxes on the row
 18 marked compilation. Does that -- does the analysis in that row
 19 make sense to you?
 20 A Not really. I mean, certainly, the no assurance part
 21 makes sense. The fact that the check mark is in compilation and
 22 we are down at the bottom of the Y axis and there is no
 23 assurance given. But in a compilation, the accountants don't
 24 characterize their compilation report, that would go to their
 25 report and the character of it.

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6708

1 In higher levels of service, really in the audit, they
 2 characterize their report based on what they found. But in the
 3 compilation, they are not trying to find anything so they can't
 4 characterize their findings.
 5 Q When you say characterize findings, you're referring to
 6 the boxes that are listed as adverse, qualified, nonqualified;
 7 is that correct?
 8 A That's correct.
 9 Q If we can focus on the Y axis, what level of assurance
 10 is offered in a compilation engagement?
 11 A No assurance. It's not even considered to be an
 12 assurance engagement.
 13 Q And what level of assurance is offered in a review
 14 engagement?
 15 A In a review engagement, accountants offer a level of
 16 assurance that's referred to as negative assurance where,
 17 essentially, they are saying we did some procedures, not
 18 extensive procedures, and we didn't find any problems. They are
 19 not saying there aren't problems there, it's just we didn't find
 20 any. It's called negative assurance.
 21 Q And what level of assurance is offered in an audit
 22 engagement?
 23 A In an audit engagement, the auditors offer positive
 24 assurance. They are saying in their statement this is what we
 25 found.

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6709

1 Q And what kind of work is involved in a audit engagement
 2 to reach that level of assurance?
 3 A It's very extensive. It's doing things like verifying
 4 the accuracy of supporting documentation, tracing documents back
 5 to source documents, tracing numbers in the financial statements
 6 back to individual transactions, lots of sampling, an extensive
 7 amount of work goes into the audit.
 8 Q And in a nonengagement, what happens if the auditor
 9 misses a GAAP departure?
 10 A It is a failure, a performance failure.
 11 Q And in review engagement, what happens if the
 12 accountant misses a GAAP departure?
 13 A There it is not clearly a performance failure as long
 14 as they completed all of the procedures that are normally part
 15 of a review.
 16 Q And what about a compilation engagement? What happens
 17 when an accountant misses a GAAP departure?
 18 A They are not responsible for finding GAAP departures,
 19 so it is not a performance failure to not find a GAAP departure.
 20 Q What if there was a GAAP departure that was obvious but
 21 they didn't catch?
 22 A If it was obvious to them and they didn't catch it,
 23 then that is a performance failure by the accountants.
 24 Q Who ultimately makes the decision about which level of
 25 review to select?

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6710

1 A The issuer.
 2 Q And in general, is one level of review more expensive
 3 than another?
 4 A Yes, the audit is very expensive compared to the
 5 compilation.
 6 Q And the standards for the compilation are consistent
 7 with what you reviewed in ARC 80; is that correct?
 8 A That's correct. Those are the standards for a
 9 compilation.
 10 Q Are the standards that are laid out in AR 80 and ARC 80
 11 reflected anywhere in the communications between the audit firms
 12 of Mazars and Whitley Penn and the Trump Organization?
 13 MR. KISE: Objection. Leading.
 14 THE COURT: Well, it is leading but it is a
 15 preliminary. Is there any way to rephrase so I don't have
 16 to rule.
 17 MR. WALLACE: Okay.
 18 Q Professor Lewis, how, if at all, are the standards laid
 19 out in AR 80 and ARC 80 reflected in the communications between
 20 accounting firms Mazars and Whitley Penn and The Trump
 21 Organization?
 22 A They can be found in two places. So they're in the
 23 engagement letters between the accountants and the issuer and
 24 they are also in the management representations letter where the
 25 issuer acknowledges those -- the responsibilities of the various

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6711

1 parties.
 2 Q Anywhere else?
 3 A So this is a communication in general not necessarily
 4 between those two, but in the accountant's compilation report,
 5 they are repeated again.
 6 Q Professor Lewis, are you familiar with Mr. Flemmons'
 7 testimony to the effect that it was a red flag that certain
 8 future revenues in the supporting data spreadsheets were not
 9 discounted to present value?
 10 A Yes.
 11 Q And why was that a red flag?
 12 A Well, each of the methods allowed under the
 13 implementation guidance in 274 requires that amount to be
 14 brought to present value so the amounts to be discounted.
 15 Q And does that constitute a GAAP failure of not bringing
 16 future amounts to present value?
 17 A Yes. It's a technical GAAP failure, written right in
 18 the standards, written right into the standards.
 19 Q In the course of your report, did you identify any
 20 valuations in the statement of financial condition that failed
 21 to discount revenues to present values?
 22 MR. KISE: Objection. In the course of performing
 23 his duties, he simply relied on the valuation numbers from
 24 others. So this witness have absolutely no basis to make
 25 that determination in the absence of testimony from other

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6712

1 experts that are not in the trial record at all. Hirsh and
 2 Korologos, he based his opinions on those. He has no
 3 independent valuation analysis and he didn't conduct any.
 4 MR. WALLACE: It is not a valuation question. It
 5 is a disclosure question.
 6 MR. KISE: No, it is a valuation question. In
 7 order to determine whether or not there is an adequate
 8 disclosure, you have to look at the valuation and make an
 9 assessment. The only way he was able to do that is to rely
 10 on what other people that the AG spoon fed him and told him.
 11 He didn't conduct any independent analysis of any kind and
 12 because they've chosen not to call those experts they can't
 13 backdoor that into the case.
 14 THE COURT: Mr. Wallace.
 15 Q Professor Lewis, did you independently review --
 16 THE COURT: You're withdrawing the last question?
 17 MR. WALLACE: If I can lay some foundation for the
 18 basis of his opinion, but I was moving on to something else.
 19 I can lay further foundation if Mr. Kise thinks it is
 20 inappropriate because he is relying on other people. It is
 21 not the case.
 22 THE COURT: You are withdrawing the last question?
 23 MR. WALLACE: Sure.
 24 THE COURT: You say now you're going to lay the
 25 foundation. Okay. Go ahead.

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6713

1 Q Professor Lewis, did you conduct analysis in the course
 2 of preparing your report as to whether or not values in the
 3 statements of financial condition had been discounted to present
 4 value?
 5 A I did.
 6 Q And so did you independently form a view as to whether
 7 or not there were valuations in the statement of financial
 8 condition that were not discounted to present value?
 9 A Yes, I did.
 10 Q And did you agree with Mr. Flemmons' testimony that
 11 there were amounts in the statements of financial condition that
 12 had not been discounted to present value?
 13 A I agree with Mr. Flemmons on that, yes.
 14 MR. KISE: Objection. Mischaracterizes
 15 Mr. Flemmons' testimony.
 16 THE COURT: My objection, if this is a rebuttal,
 17 why are we asking him if he agrees.
 18 MR. WALLACE: I am going to the next point. My
 19 examinations are being continually interrupted so if they
 20 make --
 21 MR. KISE: It is continually interrupted based on
 22 improper questions and lack of foundation. Your Honor, this
 23 witness didn't conduct an independent analysis other than to
 24 rely on those two reports. There is no way that he could
 25 have conducted a valuation analysis without relying on those

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6714

1 two reports based on the language of his own reports. It is
 2 not possible.
 3 THE COURT: I disagree. Overruled.
 4 Q In your view, was the GAAP departure of not discounting
 5 amounts to present value disclosed in the statement of financial
 6 condition?
 7 MR. KISE: Objection. Leading.
 8 MR. WALLACE: It is a foundational question.
 9 MR. KISE: That's a substantive question, Your
 10 Honor. That's a substantive question.
 11 THE COURT: Can we do -- can we do the Suarez
 12 maneuver.
 13 Q How, if at all, were the GAAP departures disclosed in
 14 the statement of financial condition?
 15 A The failure to discount was not disclosed in the
 16 statements of financial condition.
 17 Q Okay. I'd like to pull up a section of Mr. Flemmons'
 18 testimony concerning the use of undiscounted cash flows in
 19 valuing golf clubs. If we can pull up pages 4415 and 4416 of
 20 the trial transcript.
 21 Are you familiar with this testimony from Mr. Flemmons?
 22 A Yes.
 23 Q I would direct your attention to the section in
 24 response to the question 14. Would professional accounting
 25 standards require Mazars to provide guidance to management on

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6715

1 the appropriate disclosure of this methodology -- well, strike
 2 that. Withdrawn.
 3 If we look at the first question and answer starting at
 4 line seven, the question and answer beginning at line seven.
 5 "QUESTION: Was the lack of apparent discounting
 6 disclosed by the supporting data to Mazars?
 7 "ANSWER: In my view, it is clear on the face of
 8 the -- this document that there is no discounting. Again,
 9 with the very remote caveat that is included in some of
 10 these values, that my conclusion from reviewing this
 11 document would be that there is no discounting applied."
 12 The next question.
 13 "Would professional accounting standards require
 14 Mazars to provide guidance to management on the appropriate
 15 disclosure of this methodology?
 16 "ANSWER: Yes. Under professional standards, their
 17 obligation is to review the support for obvious GAAP
 18 departures. I believe Mr. Bender testified to that as
 19 well."
 20 Let's stop there. Do you agree with Mr. Flemmons
 21 that under professional standards an accountant performing a
 22 compilation engagement has an obligation to review
 23 supporting documents for obvious GAAP departures?
 24 A So according to the performance, no, I don't.
 25 Q Why not?

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6716

1 A Because --
 2 THE COURT: He's learning.
 3 A So according to the performance standards, what the
 4 accountant has the obligation to review is the financial
 5 statements, the final statements. So it says very clearly in
 6 their performance standards that they will not verify accuracy
 7 of supporting information. So if, on the other hand, if they
 8 noticed something without doing an investigation, they have an
 9 obligation to point it out to the issuer but they don't have an
 10 obligation to review supporting standards for evidence of GAAP
 11 departures, even obvious ones.
 12 Q If we continue in his answer, he states, quote, and to
 13 me, this constitutes an obvious GAAP departure that the
 14 accountants that are performing the compilation would then have
 15 duties under professional standards to followup on. I believe I
 16 referred earlier to the requirement to perform inquires, resolve
 17 the discrepancies either through the form of having adjustments
 18 made to apply the discounting in this case or to include the
 19 disclosure in the accountant's report.
 20 Stop there. Do you agree with Mr. Flemmons that under
 21 professional standards an accountant performing a compilation
 22 engagement is required to perform inquires and resolve
 23 discrepancies if they identify a GAAP departure?
 24 A If they identify a GAAP departure, the first step is to
 25 bring that to the issuer and then that produces a decision point

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1 based on the issuer's response.
 2 THE COURT: That was a yes or no question.
 3 A Yes, they have some responsibilities.
 4 Q Now, let's focus on the last section. It says, "I will
 5 say that we have seen other examples of lack of discounting and
 6 Mr. Bender, as I have said before, testified that the absence of
 7 discounting he believed was subsumed in the disclosure in the
 8 accountant's report related to the lack of using ECV for a
 9 substantial part of the assets reported in the statement of
 10 financial condition."
 11 Professor Lewis, do you have an understanding of what
 12 opinion Mr. Flemmons is offering here?
 13 A So, I don't. The way I read it he is not actually
 14 offering an opinion. He's relating what he believes Mr. Bender
 15 testified to.
 16 Q Well, it says as I said before. Let's see if some
 17 additional context might be helpful. If we can pull up pages
 18 4339 and 4340 from the transcript. This is another excerpt of
 19 testimony from Mr. Flemmons. And as you can see, this is a
 20 section at the top addressing the 2014 statement of financial
 21 condition in line four. Mr. Flemmons is then asked on line 17:
 22 "QUESTION: And what does it mean in a GAAP
 23 departure, does -- excuse me, in a GAAP disclosure when it
 24 says that, quote, several of the values have been based on
 25 future interests that in some instances are not for fixed or

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1 determinable amounts and in some instances are based on
 2 performance of future services?"
 3 I'll stop there. Are you familiar with the
 4 language that's being quoted here?
 5 A Yes. My guess -- I don't want to guess. I believe
 6 that comes from Section 35.
 7 Q If we could put up Plaintiff's Exhibit 730. We have a
 8 hard copy for you. This is already in evidence. If you could
 9 turn to page two of the document. If you look at the fourth
 10 paragraph on page two, I'll read it into the record. It states,
 11 "Accounting principles generally accepted in the United States
 12 of America require that in order to reflect amounts to be
 13 received in the future at estimated current values the rights
 14 must be nonforfeitable, fixed and determinable, and not require
 15 any future services. As discussed in notes 3, 4, 5, and 6,
 16 several of the values expressed have been based on future
 17 interests that in some instances are not for fixed or
 18 determinable amounts and in some instances are based on
 19 performance of future services."
 20 Do you see if this is a section of the SOFC that was
 21 quoted in the question we were just looking at?
 22 A Yes, that's -- that language is the same.
 23 Q And are you familiar with this disclosure regarding
 24 future interests in the statement of financial condition?
 25 A Yes. As I said, I believe it's in Section 35 of the

Professor Lewis - by Plaintiff - Direct (Mr. Wallace) Page 6719

1 standards.
 2 Q That's in ASC 274?
 3 A ASC 274-10-35.
 4 Q If we can -- so, if we could put up, split screen,
 5 Plaintiff's Exhibit 1609 and turn to page seven. If we look
 6 toward the top of the page, there's a heading that reads,
 7 "future interests in a similar assets."
 8 This is the section you are referring to, Professor
 9 Lewis?
 10 A It is, yes.
 11 Q I am happy to read this one into the record. It is
 12 3511 "Nonforfeitable rights to receive future sums that have all
 13 of the following characteristics shall be presented as assets at
 14 their discounted amounts. A, the rights are for fixed or
 15 determinable amounts. B, the rights are not contingent upon the
 16 holder's life expectancy or the occurrence of a particular event
 17 such as disability or death; C, the rights do not require future
 18 performance of service by the holder. Under this provision of
 19 ASC 274, how is the future interest to be presented?
 20 MR. KISE: Your Honor, I've given Mr. Wallace some
 21 latitude. We are so far beyond the bounds of proper
 22 rebuttal. All of this, including the SOFC disclosure that
 23 he just read into the record, was all the subject of their
 24 case-in-chief, the Bible disclosures. I am not sure
 25 whether, based on the testimony that he put up, whether

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1 we're rebutting Mr. Flemmons' testimony or Mr. Bender's
 2 testimony because both of them testified the same way.
 3 That's what the provision that Mr. Wallace just read. So
 4 are they now using their expert on rebuttal to rebut what
 5 Mr. Bender said about these disclosures or about what
 6 Mr. Flemmons said? I mean --
 7 THE COURT: You said they said the same thing.
 8 MR. KISE: How do you rebut your own witness? How
 9 do you use an expert -- this is the whole reason that this
 10 rebuttal is so highly inappropriate because we're wandering
 11 off now. Are there no limits of any kind? It appears in
 12 this courtroom there are no limits of any kind on what they
 13 can do on rebuttal. Let's just -- let's ask whatever
 14 question we want even though this was all fully available to
 15 them. Under the guise of rebuttal now, we are just back
 16 filling, back filling and back filling a giant hole in their
 17 case. It his highly objectionable and respectfully just
 18 flat reversal. Everything is not but this certainly is.
 19 MR. WALLACE: It is only reversible if the judge
 20 relies on it.
 21 THE COURT: I'm lost. And I'm not sure -- again,
 22 this may not be Mr. Kise exact objection but you jump from A
 23 to B to C and can you put this together and tie it more to
 24 Flemmons' testimony?
 25 MR. WALLACE: I am trying to get there, Your Honor.

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1 This is an insane standard. I am being continually
 2 interrupted. I would like a chance to just present the
 3 witness, and we are getting to the point eventually. I
 4 guess I need another speech before we continue.
 5 MR. KISE: It is not another speech and petulant
 6 and outburst don't really play well in a courtroom. I am
 7 not sure you know that, Kevin. The bottom line is I am just
 8 as confused. I didn't add that because I figured no one
 9 would listen. There is just no guidepost here at all. We
 10 are just wandering around in the abyss of letting this
 11 witness testify about anything. It is such an improper
 12 rebuttal. I don't see how they are allowed to continue.
 13 (Continued on next page)
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1 now been asked what the purpose is and I'm going to say
 2 it.
 3 MR. KISE: Again, your Honor, they're
 4 rebutting their own witness? They're rebutting Donald
 5 Binder with this witness?
 6 THE COURT: Well, it doesn't really matter
 7 whether they're rebutting one of their witnesses and
 8 one of your witnesses, as long as they are rebutting
 9 one of your witnesses.
 10 MR. KISE: Oh, as long as we can just rebut
 11 anyone, let's just pick Donald Bender's testimony and
 12 allow this witness to rebut their own witness.
 13 THE COURT: I believe there are some
 14 strictures and limitations on rebutting your own
 15 witness. But, let me ask the plaintiffs a question.
 16 Was Mr. Bender, whom you called, a friendly
 17 or a hostile witness?
 18 MR. WALLACE: We did not cross examine him
 19 as a hostile witness. He was someone we called on our
 20 case and chief.
 21 THE COURT: So are you impeaching your own
 22 witness?
 23 MR. WALLACE: We didn't feel the need to as
 24 part of our case and chief. They decided to present an
 25 expert to say that it was correct. But, we are

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E.Lewis - Plaintiff - Direct/Mr.Wallace

1 THE COURT: You can raise that on appeal.
 2 Objection, overruled.
 3 And, you can cross examine, Mr. Wallace.
 4 Continue.
 5 MR. WALLACE: I'm trying to find my place
 6 again, your Honor. I believe we read into the record
 7 this section of 3511.
 8 Q. Are you familiar with this section,
 9 Professor Lewis?
 10 A. I am.
 11 Q. So under this provision of ASC 274, how is a
 12 future interest being presented?
 13 A. At discounted amounts as the first sentence says.
 14 Q. Based on the disclosure in the SOFC that we just
 15 looked at, in what way does the inclusion of future
 16 interests fail to comply with GAAP?
 17 MR. KISE: Your Honor, how does that rebut
 18 Mr. Flemmons' testimony? He's asking about the SOFC
 19 and whether or not the SOFC complies with this
 20 standard. That's not rebuttal. That's just testimony.
 21 MR. WALLACE: Disclosure has nothing to do
 22 with discounting the present value. So, to the extent
 23 that that's the opinion of Mr. Flemmons and that's the
 24 opinion of Mr. Binder, they are wrong. And we're
 25 trying to get the witness to explain that. So, I've

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1 rebutting what Mr. Flemmons said.
 2 MR. KISE: This is the whole point. This
 3 was in their case and chief. If they thought
 4 Mr. Bender's testimony wasn't correct then, in their
 5 case and chief, they should have called this witness to
 6 explain that and fix it in their case and chief not
 7 backfill it out.
 8 THE COURT: Objection overruled. I want to
 9 hear what they have to say. That's my general
 10 principle at trials. You know, I want to hear what
 11 people have to say. Then, I will do my best to reach
 12 the correct solution, resolution. Objection,
 13 overruled.
 14 Again, you have a standing objection. You
 15 don't like any of this, Mr. Kise. That's clearly
 16 understood. And, you will have a chance to cross
 17 examine. You will have a chance to argue in posttrial
 18 submissions. You will have a chance to argue on appeal
 19 if you choose to do so. Let's move on with fewer
 20 interruptions.
 21 DIRECT EXAMINATION
 22 BY MR. WALLACE:
 23 Q. Professor Lewis, does the disclosure that we were
 24 looking at delay, in any way, the failure to discount
 25 present value?

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6725

1 A. No.

2 Q. Why not?

3 A. There is no mention of discounting or present

4 value in the disclosure.

5 Q. And, future interest and similar assets, do those

6 need to be discounted to present value even if they are

7 included in financial statement?

8 A. They do.

9 Q. Does ASC 274 provide any guidance on what kinds of

10 assets are encompassed within the kinds of future interests

11 being addressed in section 3511?

12 A. It does.

13 Q. Where would that be found?

14 A. There is a link to it if you have a live document.

15 But, it's in a much later section. Its down in the fifties.

16 MR. WALLACE: Okay. If we could open up the

17 highlighted section to show a couple of lines below

18 here please?

19 A. So there at 55-7.

20 MR. WALLACE: If we could turn to page 14 of

21 Plaintiff's Exhibit 1609.

22 Q. If we look at section 55-7, under the heading

23 "future interest and similar assets" it states, "This

24 paragraph provides implementation guidance on the

25 application of paragraph [REDACTED]

E.Lewis - Plaintiff - Direct/Mr.Wallace Page 6727

1 above; separately carved out. And, they don't fit any of

2 the characteristics.

3 MR. WALLACE: If we could turn to the trial

4 transcript, pages 4339 and 4340.

5 Q. If we look at the question at the bottom of page

6 4339, starting on-line 17:

7 "QUESTION: And what does it mean in a GAAP

8 departure does --

9 MR. WALLACE: I will strike that. We

10 already read that section. I will just go to the

11 answer of that section where Mr. Flemmons says, "Well,

12 again, this is a fairly broad disclosure that could

13 cover a variety of different issues with regard to GAAP

14 accounting.

15 "I know that one of them that this

16 addresses -- and, this was also consistent with

17 Mr. Bender's deposition testimony -- related to certain

18 assets that were not discounted even though the future

19 cash flows was used as a basis for determining the

20 estimated current value. Um, but I think there are

21 several items that would fall under this umbrella."

22 Q. To the extent Mr. Flemmons is expressing an

23 opinion that the disclosure language we were reviewing,

24 concerning future interests related to certain assets that

25 were not discounted, do you agree with that opinion?

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1 I will stop right there. Is that the section you

2 were just looking at?

3 A. That's where we were, yes.

4 Q. It continues, "Non-forcible rights that may have

5 those characteristics include all of the following (a)

6 guaranteed minimum portions of pensions (b) vested interest

7 in pension or profit sharing plans (c) deferred compensation

8 contracts (d) beneficial interests in trust (e) remainder

9 interests in property subject to life estates (f) annuities

10 and (g) fixed amounts of alimony for a definite future

11 period."

12 Do you know, one way or the other, if the

13 Statements of Financial Condition, for Mr. Trump, valued any

14 assets similar to what's being described in this section?

15 A. The only one might be (d) the beneficial interests

16 in trust.

17 Q. Mr. Trump's Trust was a revocable trust; is that

18 correct?

19 A. Correct.

20 Q. In your opinion, does future anticipated real

21 estate developments fit within the category of future

22 interests as that term is used in ACS 274?

23 A. No.

24 Q. Why not?

25 A. Because those are dealt with in the section just

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1 A. No.

2 Q. To the extent that Mr. Bender, at his deposition,

3 may have been expressing an opinion that the disclosure

4 language we were reviewing, concerning future interests

5 related to certain assets that were not discounted, do you

6 agree with that opinion?

7 A. So, I don't know what they tried to do. But, no,

8 it doesn't. It doesn't disclose that.

9 MR. WALLACE: Nothing further, Your Honor.

10 THE COURT: Any redirect?

11 MR. WALLACE: Cross.

12 THE COURT: I'm sorry. How could I forget

13 that.

14 MR. KISE: Your Honor, given that you've

15 allowed this witness to come in as a rebuttal witness,

16 we had no idea prior to the time he took the stand,

17 exactly, what he was going to say, we would ask the

18 Court for a break so that we can, at least, organize

19 our cross.

20 THE COURT: Sure. How long a break do you

21 want?

22 MR. KISE: Hold on one moment.

23 If your Honor would give us until 11:45. I'm

24 assuming, your Honor, based on your ruling yesterday or

25 our discussion yesterday, you're not allowing us to

Proceedings Page 6729

1 call our rebuttal witnesses?
 2 THE COURT: Correct. 11:45, plaintiff, is
 3 that reasonable for them to --
 4 How long do you think the cross examination
 5 will be?
 6 MR. KISE: We should be done by the lunch
 7 break if not before.
 8 THE COURT: Okay. All right. 11:45.
 9 MR. WALLACE: If it is before the lunch
 10 break, no objection then.
 11 THE COURT: That's the important part.
 12 Okay. 11:45, everyone.
 13 MS. FAHERTY: Judge, you need to admonish
 14 the witness.
 15 THE COURT: Mr. Lewis, please do not or I
 16 order you not to discuss this case or your testimony or
 17 anything related to it during the long break.
 18 (A recess was taken.)
 19 (After the recess the following occurred:)
 20 COURT OFFICER: All right, Part 37 is back
 21 in session. Please, be seated and come to order.
 22 THE COURT: Okay. Let's start the cross
 23 examination of the rebuttal witness.
 24 Please, proceed.
 25 MR. SUAREZ: Thank you.

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6731

1 A. They didn't prepare my opinions.
 2 Q. How much time has Kroll spent assisting you in
 3 preparing your opinions in this case?
 4 A. I don't know.
 5 Q. At your deposition, do you recall telling me that
 6 you had been retained by Kroll in this case?
 7 A. I do.
 8 Q. Why didn't you disclose that in your initial
 9 report?
 10 A. My client, in my view, is the Office of the
 11 Attorney of General.
 12 Q. When I asked you at your deposition, you said it
 13 was Kroll. So who asked you to change that.
 14 A. I wasn't asked to change it. Really, you pointed
 15 it out. So --
 16 Q. Okay. So, it's my fault that you recognized that
 17 the Attorney General and not Kroll is your client?
 18 A. I recognize the Attorney General as my client.
 19 When you asked who retained me, I didn't take it in a legal
 20 sense.
 21 Q. Because you're not a lawyer?
 22 A. Correct.
 23 Q. You don't practice law?
 24 A. That's true.
 25 Q. You don't practice accounting either?

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6730

1 CROSS EXAMINATION
 2 BY MR. SUAREZ:
 3 Q. Mr. Lewis, you've been paid about 150,000 in this
 4 case so far?
 5 A. That's what I billed. Yes.
 6 Q. That's what you billed?
 7 A. Yes.
 8 Q. That's about 40 percent of the 360,000 a year you
 9 make as a Professor of Practice at Cornell?
 10 A. Yeah.
 11 Q. How much were the taxpayers billed for the work of
 12 the lady from Kroll that has been sitting here in the
 13 audience.
 14 A. I have no idea.
 15 Q. How much has Kroll charged the taxpayer for your
 16 testimony in this case?
 17 A. Just my billings I believe.
 18 Q. I'm sorry?
 19 A. As far as I understand, just my billings.
 20 Q. So Kroll is not making a markup on you?
 21 A. No.
 22 Q. How do you know that?
 23 A. They haven't indicated that.
 24 Q. Okay. And how much time has Kroll spent preparing
 25 your opinions in this case?

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6732

1 A. I do.
 2 Q. In your courses, you're not a CPA, right?
 3 A. I'm not.
 4 Q. You've never taken the CPA exam?
 5 A. No.
 6 Q. Is it your position that you practice accounting
 7 by teaching it at Cornell?
 8 A. Yes.
 9 Q. Okay. How is that the practice of accounting?
 10 A. So the practice of accounting is recognized by the
 11 AICPA in a number of different ways; including, in fact, the
 12 teaching of accounting. And that's one of the ways to
 13 qualify for licensure.
 14 Q. "Licensure" being the CPA exam?
 15 A. "Licensure" being the CPA license part of which is
 16 the exam.
 17 Q. Which you've never taken?
 18 A. That's correct.
 19 Q. So, just to be sure, you haven't qualified as a
 20 CPA by teaching courses at Cornell?
 21 A. I have qualified to be a CPA. All I would need to
 22 do is take the exam.
 23 Q. Which you haven't done.
 24 A. That's correct.
 25 THE COURT: That's the fourth time or so.

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6733

1 Q. So then --

2 MR. SUAREZ: Well, we're just trying to

3 understand here, Judge, what the basis for his

4 statements on the record are today.

5 THE COURT: That's fine but, don't ask the

6 same question four times Which we already knew from

7 testimony yesterday I believe.

8 Q. Then, you would say that your work at Cornell,

9 teaching accounting, qualifies you to interpret accounting

10 standards?

11 A. I teach students how to interpret accounting

12 standards.

13 Q. Are you aware that your students describe you as

14 the worse professor in the Cornell Accounting program?

15 A. I understand what rate my professor is in

16 cherrypicking.

17 Q. And that your students say that your lectures lack

18 any useful content for assignments or professionally, so you

19 don't learn much?

20 A. Did you pick any good ones for balance?

21 Q. Yeah. Here's a good one. It says, "It's a good

22 class if you want to chill and not learn much."

23 Does that count as a good one?

24 A. I wouldn't say so.

25 Q. Or how about the one that says, "He doesn't teach.

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6734

1 He only likes to share mid-age crisis life in the class?"

2 You claim --

3 MR. WALLACE: Objection; no question.

4 THE COURT: You need to ask questions not

5 make speeches.

6 Q. Is that reflective of your experience practicing

7 accounting?

8 A. Absolutely, not.

9 Q. All right. So, in connection with your practice

10 of accounting, as a teacher at the Cornell school, you

11 haven't published any works related to ASC 274, correct?

12 A. Correct.

13 Q. In fact, when you go to Google scholar, you can't

14 even find the name Eric Lewis; is that right?

15 A. That's not right when I go there.

16 Q. In reference to you I should say. There are other

17 "Eric Lewis."

18 A. I am in Google Scholar. And a bunch of other --

19 Q. A bunch of other ones?

20 A. Yes.

21 Q. You don't have 14,000 citations in Google scholar,

22 do you?

23 A. No.

24 Q. Do you know how many citations you have in Google

25 Scholar?

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6735

1 A. I do not.

2 Q. Do you know that it is zero?

3 A. I don't know that it is zero.

4 Q. But you don't know how many you have?

5 A. No.

6 Q. If we pull up ASC 274 -- I just want to clarify

7 what the basis is for certain statements that you made here

8 in Court today under oath.

9 And we can do that by --

10 MR. SUAREZ: Let's pull up the same one that

11 Mr. Wallace used so there is no confusion.

12 MR. WALLACE: 1609.

13 Q. 1609. And here we go. If we can turn to --

14 Let me ask you a simple question. Would you

15 agree, Professor, that regardless of what method or

16 technique one uses to value properties for personal

17 financial statements, at the end of the day, the resulting

18 value must be the amount at which the asset would be

19 exchanged between a willing seller and a willing buyer, both

20 well informed and neither of whom is compelled to buy or

21 sell?

22 A. Yes, that's the definition.

23 Q. That's, actually, not the definition, Professor.

24 MR. SUAREZ: Let's pull up the definition.

25 A. Okay.

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6736

1 MR. SUAREZ: Can we pull up the definition?

2 Q. You see "estimated current value for an asset.

3 The amount at which the item could be exchanged between a

4 buyer and a seller?"

5 A. Yes.

6 Q. Does the distinction between the term "could" and

7 "would" mean anything to you, Mr. Lewis?

8 A. Sure. So, "could" indicates a possibility as does

9 "would."

10 Q. So, if we go to the glossary definition of

11 estimated current value -- we could pull that up from

12 Plaintiff's Exhibit 1609.

13 Let's just clear something up here. If we go to

14 page two, you said, "The primary focus of personal financial

15 statements is a person's assets and liabilities. And the

16 primary users of personal financial statements normally

17 consider estimated current value information to be more

18 relevant than their historical cost information."

19 Do you see is that?

20 A. I see it. Yeah, you read the first lines of

21 paragraph two.

22 Q. You see here where it says, "Estimated current

23 value" you said it was bold and underlined by FASB?

24 A. Yes.

25 Q. Do you know what a hyperlink is?

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6737

1 A. It is a hyperlink to the definition.
 2 Q. It is not that it is bold --
 3 A. It is bold and underlined in paper file. And,
 4 it's a hyperlink in the digital document so that you can go
 5 to the definition.
 6 Q. It's "a hyperlink in the document" now.
 7 MR. SUAREZ: If we pull up the glossary
 8 definition of estimated current value -- I think we're
 9 going to have to pull up the other one because, this
 10 one doesn't have it -- at 274-10-20 here. And, we can
 11 focus in on that.
 12 Q. You see where it says, "glossary?"
 13 A. Yes.
 14 Q. Then it says, "For an assets, the amount at which
 15 the item could be exchanged" -- emphasis on could as mine --
 16 "between a buyer and seller, each of whom is well informed
 17 and willing, and neither of whom is compelled to buy or
 18 sell."
 19 Do you see that?
 20 A. I see.
 21 Q. When I ask you here what the definition of
 22 estimated current value was, you simply repeated the same
 23 false definition that the Government has been parroting over
 24 and over in this case.
 25 A. You repeated it. I didn't hear that you said

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6739

1 "could."
 2 As you heard Professor Bartov and, I believe,
 3 also, Mr. Flemmons testify that this witness is,
 4 apparently, seemingly that "There is no distinction
 5 between 'could' and 'would'." Perhaps it's a
 6 demonstration of his lack of knowledge. But the point
 7 is that the FASB --
 8 THE COURT: Let me jump in. Is this "Could
 9 is more future oriented and 'would' is more present
 10 oriented?"
 11 MR. KISE: Right. "Would" is today. And,
 12 if you see, we're going to pullup the definition of
 13 "fair market value" and compare them side by side.
 14 The definition of "fair market value" means,
 15 "What is it today?"
 16 "Estimated current value" which, as you've
 17 heard the testimony, is a, completely, different
 18 concept. It is, as Professor Bartov calls it, the
 19 stepchild. It is a very different concept.
 20 And it doesn't incorporate terms of
 21 "currently" and "today." It is a different concept all
 22 together. That's why it has different rules and
 23 different guidance.
 24 That's why FASB has gone to the trouble of
 25 creating two separate definitions. If it was all

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6738

1 "could" rather than "would." And, so, sorry.
 2 Q. You're the expert in accounting or that's what
 3 we've been asked to believe, right?
 4 MR. WALLACE: Objection.
 5 MR. SUAREZ: Withdrawn.
 6 Q. If you were to tell your students -- if a student
 7 were to come in and tell you that the definition, provided
 8 in the glossary, of "estimated current value" is "the amount
 9 at which an item would be exchanged," would you tell that
 10 student that he's wrong?
 11 A. We might go look at that together.
 12 Q. Okay. And, is that what the ASC 274 says? Does
 13 it say, "would" or does it say, "could?"
 14 A. It says, "could."
 15 Q. So if you used the term "would" it would be an
 16 incorrect recitation of what the ASC guidance says, correct?
 17 A. Yes.
 18 Q. You would agree with me --
 19 THE COURT: Hold on.
 20 Witness excuse for a minute.
 21 Question for Mr. Suarez or anyone on the
 22 team. What difference does it make whether it's
 23 "could" or "would" in your opinion.
 24 MR. KISE: It's not my opinion. It's the
 25 opinion of actual accounting experts the "would" and

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6740

1 supposed to be the same, they would have just used
 2 "fair market value."
 3 THE COURT: To me it is. I'll leave it at
 4 that. Let's get the witness back.
 5 Mr. Suarez, do you agree with Mr. Kise?
 6 MR. SUAREZ: Yes, sir, your Honor.
 7 MR. ROBERT: We always agree with Mr. Kise.
 8 MR. KISE: Not always.
 9 Q. Now, Mr. Lewis, are you familiar with the other
 10 definitions in the accounting standards for value?
 11 A. I'm familiar with fair value.
 12 Q. What's the definition of fair value?
 13 A. You could -- we were just looking at it. So, I'm
 14 not going to recite it as a memory test. If you want to
 15 show it to me --
 16 Q. In your own words, what's the definition of fair
 17 value?
 18 A. Fair value looks to establish a market-based
 19 approach to valuing an asset by looking at three different
 20 levels; one, is an active and engaged market, the second
 21 level is a model and the third level is an estimate. The
 22 word-for-word definition, I won't try to recite.
 23 Q. That's a different value than -- excuse me.
 24 That's a different measure of value than estimated
 25 current value, correct?

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6741

1 A. It is a different definition.
 2 Q. ASC 274 doesn't use fair value, does it?
 3 A. ASC 274, no, it does not.
 4 Q. And, just like the FASB was precise when it wrote
 5 the definition of estimated current value, it wasn't an
 6 accident that they didn't just use the definition of current
 7 value?
 8 A. I think they tried to be precise.
 9 Q. So if we go back to ASC 274 and we look at the
 10 implementation guidance at ASC 274-10-55, you would agree
 11 with me that there is implementation value at 55-7 for
 12 future interests and similar assets, right?
 13 A. Yes, that's what 55-7 discusses.
 14 Q. And there is also implementation guidance for real
 15 estate, correct?
 16 A. Yes.
 17 Q. And the implementation guidance for future
 18 interest and similar assets is different than the one for
 19 real estate, right?
 20 A. Yes.
 21 Q. But in your mind or at least according to what
 22 you've told the Court today, you believe that those
 23 implementation guidelines have to, somehow, be harmonized
 24 with the glossary definition of estimated current value?
 25 A. With the definition, yes, I don't think that 55-6

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6742

1 and 55-7 -- because, they're specialty areas, they both go
 2 back up to 55-1.
 3 Q. They don't both go back up to 55-1.
 4 A. According to you?
 5 Q. No, according to you.
 6 A. No, they do go back up to 55-1.
 7 Q. You are the teacher and account, right?
 8 A. According to me, they go back up to 55-1. And
 9 these are specialty areas. Four, six and seven say, "If you
 10 have this kind of asset, here are some things you should
 11 consider."
 12 Q. And they all have to fit back within the
 13 definition -- is it your view that they all have to fit back
 14 within the definition in the glossary?
 15 A. Of estimated current value?
 16 Q. Yes.
 17 A. Absolutely.
 18 Q. I'm sorry?
 19 A. Yes.
 20 Q. Where does it say that?
 21 A. The definition is part of the standard.
 22 Q. Not the question I asked.
 23 Where does it say that in ACS 274?
 24 A. In the definition.
 25 Q. Where does it say that?

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6743

1 A. Where it says that assets must be presented at
 2 current -- at estimated current fair current value.
 3 Q. You are misunderstanding my question. So I will
 4 try to ask it better.
 5 Where does it say, in ASC 274, that the
 6 implementation guidance has to be harmonized with the
 7 definition in the glossary?
 8 A. Where it says that assets must be presented at
 9 estimated current value.
 10 Q. Point it out to me. Because, I don't see where it
 11 says what you're saying that it says.
 12 A. Okay.
 13 THE COURT: Can we put it on the screen.
 14 Q. I understand that there is a different glossary
 15 definition. But, where does it say, in this definition,
 16 that, the glossary definition overrides the implementation
 17 guidelines?
 18 A. In 35-1. At 274-10-35-1.
 19 Q. Where it says, "Personal financial statement shall
 20 present assets at their estimated current values and
 21 liabilities of their estimated current amounts on the date
 22 of the financial statements?"
 23 A. Yes.
 24 Q. Where does it say that the glossary definition
 25 trumps the implementation guidelines?

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6744

1 A. That is the glossary. You've got your hyperlink
 2 there to the glossary definition that's telling you they are
 3 going to be presented at estimated current value.
 4 The implementation guidance tells you how you
 5 might seek to establish an estimated current value.
 6 Q. The hyperlink which previously you discussed was
 7 FASB's effort to underline, in bold, the glossary
 8 definition --
 9 A. In the document.
 10 Q. In the document.
 11 A. You saw how it worked --
 12 Q. So now, if we were to read into the definition the
 13 fact that "Because there is a hyperlink, that trumps all the
 14 other guidance" --
 15 MR. WALLACE: Objection. At this point,
 16 he's just arguing with the witness.
 17 A. In 35-1, it tells you how the assets are going to
 18 be presented.
 19 THE COURT: "Withdrawn" since he's
 20 answering?
 21 MR. WALLACE: I think he should stop arguing
 22 with the witness. But he seems to have answered the
 23 question to the extent there was a question.
 24 THE COURT: I'll deem it withdrawn.
 25 So, go ahead.

E.Lewis - Plaintiff - Cross/Mr.Suarez Page 6745

1 Q. It doesn't say -- you would agree with me that it
 2 does not say, in ACS 274-10-35-1, that, the glossary
 3 definition overrides the implementation guidance?
 4 MR. WALLACE: Objection. This has been
 5 asked and answered.
 6 THE COURT: I will let him answer.
 7 A. I think it's, exactly, what it says.
 8 Q. You would agree with me it doesn't, actually, say
 9 those words?
 10 A. The literal words, no.
 11 Q. The literal words are not there. That's your
 12 interpretation of what it says?
 13 A. I think it is a lot of people's interpretation.
 14 Q. I'm not asking about a lot of people. I don't
 15 think you are here on behalf of a lot of people. I think
 16 you're here on behalf of yourself.
 17 Answer me this, that's based on your
 18 interpretation of ASC 274, correct?
 19 A. Correct.
 20 Q. You're interpreting it because, it doesn't say it,
 21 right?
 22 A. I guess the answer is yes.
 23 (Whereupon, the following proceedings were
 24 stenographically recorded Shameeka Harris.)
 25

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6747

1 because you have promised and Mr. Kise has promised that we
 2 would be finished by, let's say, 12:50 or so. By the way,
 3 would there be any redirect of the rebuttal?
 4 MR. WALLACE: So far no.
 5 THE COURT: So I am going to be very liberal. It's
 6 your time. If you think this is the best way you can use
 7 it, go ahead.
 8 CONT'D CROSS-EXAMINATION
 9 BY MR. SUAREZ:
 10 Q All right. So, can you cite to any accounting
 11 literature that supports your opinion?
 12 A This is the accounting literature.
 13 Q This is your interpretation of the accounting
 14 literature?
 15 A That we're looking at the accounting literature.
 16 Q Can you cite to any scholarly articles that support
 17 your opinion?
 18 A No.
 19 Q Can you cite to any interpretive guidance that supports
 20 your opinion?
 21 A This is the guidance.
 22 Q I understand that that's what you think ASC 274 says.
 23 I am asking you outside of ASC 274 is there any academic work
 24 that supports your opinion?
 25 A I don't believe there is any academic work that doesn't

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6746

1 CROSS-EXAMINATION
 2 BY MR. SUAREZ:
 3 Q When in the real world -- withdrawn.
 4 You haven't actually been asked to interpret this
 5 definition in the real world outside of this case in a
 6 classroom, have you?
 7 A This case in a classroom would be those occasions.
 8 Q You have no real world experience outside of this case
 9 in a classroom as to how that definition is applied?
 10 MR. WALLACE: Objection. Asked and answered and
 11 the question is unclear.
 12 THE COURT: Let's stay with the asked and answered.
 13 Q Do you have any other real world experience other than
 14 in a classroom and in this case interpreting ASC 274?
 15 MR. WALLACE: Objection. Asked and answered.
 16 MR. SUAREZ: I asked him about the specific one and
 17 this time I was asking him about generally.
 18 If you would agree with me, Mr. Wallace, if that's
 19 the case, I guess I don't need to ask anything further. You
 20 want to stipulate to that?
 21 THE COURT: Yes or no, do you want to stipulate?
 22 MR. WALLACE: I am standing on my objection. I am
 23 not withdrawing the objection.
 24 THE COURT: You know, I try to be a practical
 25 judge. Mr. Suarez, I am giving you all sorts of leeway

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6748

1 or contradicts it.
 2 Q Not what I asked.
 3 A No, I don't know of any.
 4 Q Do you know of any guidance promulgated by FASB that
 5 supports your opinion?
 6 A This is the guidance by FASB.
 7 Q Other than ASC 274?
 8 A Other than ASC 274, no. The ASC 274 is the guidance.
 9 Q Are you aware of any guidance by the AICPA that
 10 supports your opinion?
 11 A The AICPA writes guidance on performance standards for
 12 accountants.
 13 Q The answer is no?
 14 A They don't write the standards so the answer is no.
 15 Q Would you agree with me that Mazars had an obligation
 16 to read and understand the supporting data provided in
 17 connection with its preparation of the compilation reports?
 18 A Not the supporting data, not the statement themselves.
 19 Q Would you agree with me that Mazars has an obligation
 20 to understand the basis of valuation for each asset listed in
 21 the statement of financial condition?
 22 A I believe they have the obligation to understand the
 23 basis.
 24 Q Yes or no?
 25 A Yes.

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6749

1 Q Would you agree with me that they must also confirm
 2 that the valuation method is consistent with the definition of
 3 estimated current value?
 4 A It's not a yes or no answer. I can give a short
 5 answer.
 6 Q Yes or no?
 7 A Then no.
 8 Q You know who disagrees with you, Professor, the general
 9 counsel of Mazars who sat here and testified exactly the
 10 opposite than you did.
 11 MR. WALLACE: Objection. That's not a question. I
 12 think if he wants to present the testimony from the general
 13 counsel of Mazars, he should do that through the form of a
 14 question and an answer and not a representation.
 15 THE COURT: It's stricken because it is just a
 16 representation without being a question.
 17 Q Well --
 18 THE COURT: You can try to prove that.
 19 MR. SUAREZ: His inconsistent answer is not
 20 stricken. My question as to whether he is aware that Mazars
 21 did is, correct?
 22 A I can reconcile it for you if you would like.
 23 Q See here where it says on page 2150 of the trial
 24 transcript, "And you would agree with me that Mazars has an
 25 obligation to understand the basis of valuation for each asset

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6750

1 listed in the statement of financial condition."
 2 A Correct.
 3 Q "And confirm that the valuation method is consistent
 4 with the definition of estimated current value?" Do you
 5 disagree with the general counsel of Mazars?
 6 A I don't disagree with the second part of it.
 7 Q So you don't disagree that Mazars had an obligation to
 8 confirm that the valuation method is consistent with the
 9 definition of estimated current value?
 10 A The method that was presented to them as having been
 11 the valuation method, I don't disagree with that.
 12 Q That's not what that says.
 13 A That's not what that says.
 14 Q You are reading words into it again?
 15 A So it is either not a complete question or not a
 16 complete answer.
 17 Q He seems to understand it?
 18 A Okay.
 19 Q He is a general counsel of Mazars. He actually works
 20 in an accounting firm. Then it says, you would agree that --
 21 "you would agree that Mazars has an obligation to confirm that
 22 the notes to a statement of financial condition are consistent
 23 to the supporting data when preparing an accountant's
 24 compilation report, correct?"
 25 Do you agree with that?

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6751

1 A I disagree with that.
 2 Q Okay. So you disagree with the general counsel of
 3 Mazars. Perfect. We can take this down.
 4 MR. WALLACE: We are not supposed to say okay at
 5 the end of the question. I think perfect is also
 6 inappropriate.
 7 MR. SUAREZ: He just impeached your own witness. I
 8 think that's pretty perfect.
 9 THE COURT: That's separate. I have maintained,
 10 during the whole trial, the questioner should not listen to
 11 an answer and then say okay, perfect, yes. Just do the next
 12 question. Ask the next question.
 13 Q We can go back to the trial transcript. If I could
 14 just draw your attention back to the question. "You would agree
 15 with me that Mazars had an obligation to read and understand the
 16 supporting data provided in connection with preparing the
 17 compilation of a statement of financial condition?"
 18 Do you see that?
 19 A I do.
 20 Q Did you read the supporting data?
 21 A Some of the supporting data.
 22 Q But not all of it?
 23 A Not all of it.
 24 Q Okay.
 25 THE COURT: Try not to say okay.

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6752

1 MR. SUAREZ: I'm sorry. That wasn't on purpose
 2 this time.
 3 Q Let's take a look at ARC 88, Defendant's Exhibit 26
 4 that you just reviewed with Mr. Wallace. Can we take a look at
 5 page 4 at section 13. Section 13, compilation procedure says,
 6 "The accountant should read the financial statements in light of
 7 the accountant's understanding of the applicable financial
 8 reporting framework and the significant accounting policies
 9 adopted by management and consider whether such financial
 10 statements appear to be appropriate in form and free from
 11 obvious material misstatements."
 12 Do you see that?
 13 A Yes, I do.
 14 Q Would you agree that that's a standard?
 15 A I agree that that is the performance standards.
 16 Q And would you agree that Mazars had an obligation to
 17 comply with that standard?
 18 A Absolutely.
 19 Q And that Mazars, in fact, look at the supporting data?
 20 A This doesn't reference the supporting data.
 21 Q My question is would you agree with me that Mazars, in
 22 fact, looked at the supporting data?
 23 A I believe they did. I think that's fair.
 24 Q But you didn't?
 25 A I looked at some of it.

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6753

1 Q But not all of it?

2 A Right.

3 Q So then Mazars would have an obligation to consider if

4 the financial statements are free of obvious material

5 misstatements, correct?

6 A If they have the appearance of being free of obvious

7 material --

8 Q They would have an obligation to consider if the

9 financial statements are free of obvious material misstatements

10 under the standards, do you agree with that?

11 A No, that's not what it says.

12 Q That's not based on -- that's based on your real world

13 experience?

14 A It's based on reading the standards.

15 Q Okay. Which you have interpreted in the real world how

16 many times other than in this case?

17 A A whole bunch of times.

18 Q In the real world outside of your classroom?

19 MR. WALLACE: Objection. Asked and answered.

20 THE COURT: Sustained. Asked and answered many

21 times.

22 Q Did they teach you how to read the standards in

23 engineering school?

24 A Who's they?

25 Q Whoever you learned -- withdrawn.

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1 mentioned on Friday.

2 As to the posttrial, we plan to do our submissions

3 as we have done to the Court before in the same format. We

4 would just ask for, as I believe, as you did with the

5 summary judgement, that the word limit, if there is going to

6 be a word limit, it be 25,000 words which I think is what we

7 had for summary judgement. I think.

8 THE COURT: What's the --

9 MR. WALLACE: No objection to that number. I don't

10 know that the rules call for -- it's not technically. I

11 assume we are putting in findings of fact -- proposed

12 findings of fact and conclusions of law. I'm sure whatever

13 word limits the Court would like to use -- I think that -- I

14 think that was built in to my question, Your Honor, or my

15 statement. It wasn't a question with perhaps I should have

16 asked based on Mr. Wallace.

17 We were planning to proceed as we have done before

18 with filing likes the summary judgement filing or the

19 dismissal papers, not findings of fact and conclusions of

20 law. If the courts want -- it's whatever the Court wants.

21 Some judges find that far more cumbersome to work with than

22 briefs, but I'll leave that to your discretion.

23 THE COURT: Any opinion on this?

24 MR. WALLACE: No strong preferences, Your Honor.

25 THE COURT: I would like findings of fact and

Professor Lewis - by Plaintiff - Cross (Mr. Suarez) Page 6754

1 MR. SUAREZ: Give me one second, Your Honor.

2 THE COURT: Sure.

3 Q Professor, would it surprise you to learn that a Derek

4 Jeter baseball card recently traded for over \$600,000?

5 A That doesn't surprise me at all.

6 Q So under your example, you would've got an estimated

7 current value was wrong?

8 MR. SUAREZ: I withdraw the question. I have

9 nothing further.

10 MR. WALLACE: No redirect, Your Honor.

11 THE COURT: Derek Jeter was such an amazing player.

12 It doesn't surprise me. We are excusing the witness. Let's

13 start with that. Witness, you are excused.

14 (Whereupon, the witness was excused from the

15 stand.)

16 THE COURT: Any other housekeeping besides the

17 reminder that briefs -- posttrial briefs are due January 5th

18 and oral argument will be 10 o'clock January 11th. We will

19 be in our regular courtroom 418.

20 MR. WALLACE: For procedure, I will just confirm

21 the People rest.

22 THE COURT: I should have asked for that.

23 MR. KISE: For the record, at the close of their

24 rebuttal case, we, on behalf of all defendants, again, move

25 for a directed verdict. We'll submit the papers as we

Proceedings Page 6756

1 conclusions of law because that's what I'll be doing.

2 MR. KISE: Then we don't need to deal with word

3 limits, as Mr. Wallace said, there is no word limits

4 associated with those kind of filings that I am aware of.

5 Not that we are going to exceed the number, it is technical

6 point.

7 THE COURT: 50 pages is a limit.

8 MR. KISE: I think I would rather go with word

9 limits because pages. I'd rather to go back to the

10 25,000 words that we had for summary judgement.

11 MR. WALLACE: No objection to that.

12 MR. KISE: Probably will work out to be about the

13 same but...

14 THE COURT: All right. So, what was it? How many

15 words 25,000 words?

16 MR. AMER: Was there a time for when the filings

17 need to be made.

18 MR. WALLACE: It was noon, I believe.

19 MR. AMER: Just to confirm that on the record.

20 THE COURT: Did we say noon?

21 MR. AMER: I think we said noon.

22 MR. KISE: Do we want noon, okay?

23 THE COURT: Is there still an open matter about the

24 Allen Weisselberg docs that we just recently spoke about?

25 MR. WALLACE: We need to send Your Honor -- it does

Proceedings Page 6757

1 not affect our resting of the case. We'll send you where we
 2 left things with the documents. It is immaterial to us
 3 closing our case, Your Honor.
 4 THE COURT: That's it.
 5 MR. KISE: I'm not sure about the prosecution, we
 6 certainly, as defense, would like to thank the Court for
 7 taking all the time that it did in the case. We most
 8 particularly would like to thank the court reporters who
 9 diligently worked and all of the court officers that are
 10 here that expended a considerable amount of time and I think
 11 overtime. So on behalf of the defendants, we certainly
 12 thank all of them that participated in what is truly an
 13 extraordinary effort even in the New York State court
 14 system.
 15 MR. WALLACE: At the end of case, we finally found
 16 a point of an agreement between the plaintiffs and the
 17 defendants. So we share their position.
 18 THE COURT: I think the most amazing part of the
 19 case, the one that I was happiness with is that we actually
 20 got to trial on October 2nd come hell or high water written
 21 in stone. I know how much work that took, all the reports,
 22 depositions, motions. And so I wish you all a happy holiday
 23 season and see you next year.
 24 MR. WALLACE: Thank you, Your Honor.
 25 MR. KISE: Thank you.

Page 6758

1 (Whereupon, the trial is adjourned until Thursday,
 2 January 11, 2024, at 10 o'clock a.m.)
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People of The State of New York v. Donald J. Trump, Et. Al.

Professor Eric Lewis December 13, 2023

	6706:2,6;6710:20; 6714:24;6715:13; 6718:11;6727:14; 6731:25;6732:6,9,10, 12;6733:9,9,11,14; 6734:7,10;6738:2,25; 6740:10;6747:10,12, 13,15;6750:20;6752:8	affect (7) 6698:3;6705:1,7,11, 14,21;6757:1	6740:7,8 amazing (2) 6754:11;6757:18	appreciate (1) 6688:4
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Professor Eric Lewis
December 13, 2023

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